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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

18 DREAMSTIME.COM, LLC, a  
19 Florida LLC,

20 Plaintiff,

21 v.

22 GOOGLE, LLC, a Delaware LLC;  
23 and DOES 1-10,

24 Defendants.  
25  
26  
27  
28

Case No. 3:18-CV-01910-WHA

**FIRST AMENDED CIVIL  
COMPLAINT FOR:**

- (1) VIOLATION OF SECTION TWO  
OF THE SHERMAN ACT;  
(2) BREACH OF CONTRACT;  
(3) BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH  
AND FAIR DEALING; AND  
(4) VIOLATION OF SECTION 17200  
et seq. OF THE CALIFORNIA  
BUSINESS & PROFESSIONS  
CODE -UNFAIR BUSINESS  
PRACTICES

**[DEMAND FOR JURY TRIAL]**

**Judge: Hon. William Alsup**

**Complaint Filed: March 28, 2018**

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1 Plaintiff Dreamstime.com, LLC (“Dreamstime”), through its undersigned counsel,  
 2 hereby brings this First Amended Complaint against Defendant Google, LLC (“Google”),  
 3 and DOES 1-10 (collectively “Defendants”) for violation of Section 2 of the Sherman Act  
 4 (15 U.S.C. § 2), breach of contract, breach of the implied covenant of good faith and fair  
 5 dealing, and unfair business practices, for damages and injunctive relief, and demanding  
 6 trial by jury, and claims and alleges as follows:

## 7 **I. INTRODUCTION**

8 1. This lawsuit arises out of Google’s anticompetitive, discriminatory, and unfair  
 9 conduct, as well as its related, on-going fraudulent practices and breaches of its contracts  
 10 with Dreamstime. Google is illegally maintaining a monopoly in the market for online  
 11 search advertising and is squeezing its direct-purchaser and customer, Dreamstime (and  
 12 other similarly-situated stock photography websites), out of the marketplace in the process.  
 13 This strategy is intended to and does further entrench Google’s monopoly of the online  
 14 search advertising market by crippling or eliminating sites such as Dreamstime that compete  
 15 for the same web traffic, offer similar services related to images, and sell the same image  
 16 products as Google. Dreamstime has standing to bring these claims because it participates  
 17 in Google’s market, and its injuries are inextricably intertwined with harm to competition  
 18 and consumers in the relevant market.

19 2. Dreamstime and Google traditionally compete in different markets. Google’s  
 20 primary market is online search and/or online search advertising (which are essentially one  
 21 and the same). Dreamstime’s primary market is online stock photography, *i.e.*, selling high-  
 22 quality, licensed images for marketing and other purposes to online customers. These two  
 23 markets overlap substantially, however, as to the economic interests of their participants.  
 24 Google’s monopolistic interests in the online search advertising market and Dreamstime’s  
 25 competitive interests are inextricably intertwined, as follows:

### 26 **a. Image searches are critical to Google’s online search and search ad**

27 **monopoly.** Google’s image service, Google Images, is the largest repository of  
 28 searchable and browsable images in the world, making Google far and away the

1 first place that users go to search for and browse images of every kind. Google  
 2 Images is the most prominent subcategory within Google’s search results, and it  
 3 is an essential driver of web traffic to Google. Many of the results returned in a  
 4 Google Images search are copyrighted stock photos (such as Dreamstime’s) that  
 5 Google Images enables a searcher to steal without paying for them. Google  
 6 claims it is merely providing images with links to external sites where the images  
 7 can be purchased but, in reality, most people just right-click and download the  
 8 image without ever accessing the source website and without leaving Google  
 9 images. This enhances Google Images’ dominance. Google does not “sell” stock  
 10 photos within Google Images (though it now sells them elsewhere, as noted  
 11 below). Still, Google profits immensely from the traffic Google Images generates  
 12 by selling search advertising to customers who start with Google to search for and  
 13 browse images (including stock photos).<sup>1</sup> Accordingly, Google Images’  
 14 dominance is essential to Google’s online search dominance.

- 15 **b. Stock photos are an essential aspect of Google’s online search advertising**  
 16 **dominance, and Google now offers millions of stock photos to its search**  
 17 **advertising customers.** High-quality stock photos are a critical component of  
 18 search-based display ads (ads that include pictures related to keyword searches).  
 19 The use of stock photos in search-based display ads allows online search  
 20 advertisers to create high-quality, engaging display ads that pop up when users  
 21 enter certain keywords. Even with its immense online search market power,  
 22 Google could not immediately start selling stock photos, because stock photo  
 23 companies have taken decades to acquire the hundreds of millions of individual  
 24 licenses from photographers required to build their libraries. But, through

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25  
 26  
 27 <sup>1</sup> When anyone performs a standard Google search related to images, Google prominently  
 28 displays a handful of Google Images results at the top of the search results page. This,  
 along with Google anticompetitive acts described herein fits a pattern nearly identical to the  
 Google Shopping conduct that resulted in a record €2.42 billion fine in the European  
 Commission in 2017.

1 strategic partnerships with the most dominant stock photo websites, Google now  
 2 offers hundreds of millions of stock photos within its advertising network,  
 3 allowing Google's customers to use them in their display ads. This easily makes  
 4 Google one of the largest suppliers of stock photos in the world for consumers  
 5 looking to place them in ads. Its stock photo partnerships are very valuable to  
 6 Google's search advertising monopoly and give it a direct economic interest in  
 7 growing its stock photo partners' vast libraries of licensed images (their libraries  
 8 are now Google's library). Therefore, Google's search advertising dominance  
 9 depends in part upon the dominance of its stock photo partners.

10 **c. Dreamstime offers features that can take traffic from Google Images and**  
 11 **supplies stock photos that are used in online search advertising.** As a major  
 12 stock photography repository, Dreamstime has a searchable repository of tens of  
 13 millions of images for purchase (*and* millions of free images<sup>2</sup>) that allows one to  
 14 search for and browse images by keyword like Google Images, with the added  
 15 benefit of allowing users to immediately purchase the image. Dreamstime also  
 16 supplies tens of millions of stock photos that can be used in search-based display  
 17 ads. As a result, Dreamstime and other stock photo websites supply a critical  
 18 input for the online search advertising industry. Consequently, Dreamstime and  
 19 Google's economic interests are interwoven.

20 **d. As a purchaser of Google's services that also offers products and services**  
 21 **important to Google, Dreamstime's competitive standing is inextricably**  
 22 **intertwined with Google's maintenance of its online search advertising**  
 23 **monopoly.** Dreamstime obtains its customers, many of whom it shares with  
 24

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25  
 26 <sup>2</sup> Dreamstime's "free" images are genuinely free and legally licensed, as compared to  
 27 Google's Images (only some of which are licensed). However this distinction is not  
 28 perceived in the market by most users, who download and use "free" Google Images and  
 infringe copyrights in the process. Particularly in light of this market confusion (or in some  
 cases intentional infringement), Google and Dreamstime's free image offerings compete for  
 the exact same audience.

Google, through organic searches and by purchasing advertising services from Google. It is thus a participant in Google's primary market and needs Google's search and search ad services to grow. Google and its stock photo partners compete with Dreamstime for visibility in the relevant market and for the same Google keywords related to stock photography. Google and Dreamstime also compete for the same web traffic related to licensed high-quality images, and they now both offer millions of stock photos (Google within its advertising network, and Dreamstime through a traditional stock photo website). Google and Dreamstime also have a common economic interest in stock photo *supply*, i.e., licensed images from photographers. Dreamstime directly licenses new stock photos to grow its library, which is essential to its existence. It relies upon Google's search and search ad visibility to attract new photographers. Google, on the other hand, obtains new licensed stock photos every time its stock photo partners obtain them from photographers. Accordingly, Google's search advertising dominance grows as it systematically excludes non-partner stock photo websites from access to its marketplace and as it favors its stock photo partners.

Because Google and Dreamstime's economic interests are interrelated, Dreamstime's antitrust injuries alleged herein are causally-linked to Google's unlawful monopoly maintenance in the online search advertising market.

3. Dreamstime's potential customers most frequently find Dreamstime through a Google search or search-based ad. Due to the overlap of Dreamstime's and Google Images' functionality, and the fact that they both offer stock photos directly to their customers (as well as free images to the public), most of Dreamstime's potential customers are also Google's customers. Google has abused its monopoly power to exclude Dreamstime – a participant in Google's market – from access to these customers.

4. Specifically, in or about the second half of 2015, Google began to erect an unlawful economic moat in its primary market by increasing its monopoly of image-related

1 searches and gaining control over online stock photo supply. As part of its anticompetitive  
 2 scheme, it entered into a licensing agreement with Dreamstime's biggest competitor,  
 3 Shutterstock,<sup>3</sup> and later partnered with Getty Images as well.<sup>4</sup> (Shutterstock and Getty  
 4 Images together control about 70% of the traditional stock photography market.) Google  
 5 has now licensed all of Shutterstock and Getty Image's stock photos to sell in its advertising  
 6 network, giving it a crucial competitive advantage over its competitors, such as Yahoo! and  
 7 Bing. Google also used its immense market power in online search advertising to bolster its  
 8 stock photo partners' visibility and diminish Dreamstime's visibility in Google searches,  
 9 while at the same time applying its policies unevenly to benefit its stock photo partners and  
 10 harm Dreamstime. Google intentionally altered its search algorithm – or, at least, how that  
 11 algorithm was applied to Dreamstime – to unfairly prejudice Dreamstime and favor  
 12 Google's own services and those of its partners.

13 5. Eventually, Dreamstime's ranking on Google's search results page plummeted  
 14 from at or near the top of search results for online stock photographs to 91st (as much as 20  
 15 pages deep) – well below Shutterstock and Getty Images, well below other smaller  
 16 competitors, and even well below unambiguously less relevant search results. In essence,  
 17 Dreamstime is invisible to people googling for online stock photographs. As a result,  
 18 Google devastated Dreamstime's business, cost it millions of dollars in sales and threatens  
 19 its survival. Simultaneously with Dreamstime's injury, Google's alteration of its algorithm  
 20 increased its partners' and Google Images' dominance and discriminated against  
 21 Dreamstime. Google has replicated this monopoly conduct to exclude other similarly-  
 22 situated online stock photo suppliers, including 123RF, DepositPhotos, and CanStockPhoto.

23 6. Google's anticompetitive strategy against Dreamstime and other stock photo  
 24 suppliers, however, is not limited to search bias. It also rigs the bidding in its AdWords  
 25

26 <sup>3</sup> "Shutterstock" includes Shutterstock ([www.shutterstock.com](http://www.shutterstock.com)) and other stock photography  
 27 websites it owns, such as Bigstock ([www.bigstockphoto.com](http://www.bigstockphoto.com)).

28 <sup>4</sup> "Getty Images" includes Getty Images ([www.gettyimages.com](http://www.gettyimages.com)) and the other stock  
 photography websites it owns, such as iStock ([www.istockphoto.com](http://www.istockphoto.com)) and Thinkstock  
 ([www.thinkstockphotos.com](http://www.thinkstockphotos.com)).



1 auction program for common keywords related to stock photography. Dreamstime has long  
2 been an active participant/consumer in Google's AdWords and DisplayAds online  
3 advertising programs (which Google recently renamed to Google Ads), having paid Google  
4 over \$50 million for these services over the last 12 years. Dreamstime uses AdWords to  
5 place targeted ads within Google search engine results relevant to online stock photographs.  
6 Over time and through extensive research and experimentation, Dreamstime developed  
7 efficient AdWords and DisplayAds campaigns that resulted in many sales. Though this  
8 efficiency in campaigns lowered Google's AdWords profits, it benefitted consumers by  
9 lowering the marginal cost of acquired purchases and allowed Dreamstime to offer a more  
10 competitive price for its online stock photographs.

11 7. After Google artificially tanked its search ranking, Dreamstime invested even  
12 more money in its AdWords and DisplayAds campaigns – millions of dollars – to counter  
13 Google's virtual removal of Dreamstime from organic search results. These inefficiencies  
14 increased the marginal cost of Dreamstime's acquired purchases, placing a serious strain on  
15 its finances and business model. Google perversely profited from this scheme by obtaining  
16 an anticompetitive premium for its AdWords service. Now, because Google has compelled  
17 Dreamstime to increase its AdWords spending to offset its organic search invisibility, most  
18 months Dreamstime barely breaks even or loses money. The negative impact to  
19 Dreamstime's future prospects is directly attributable to Google's discriminatory conduct,  
20 all of which increases Google's monopoly of the online search advertising market by  
21 removing an important supplier of stock photos for search advertisers, increasing the  
22 breadth of Google's library of stock photos and promoting Google Images to the exclusion  
23 of sites like Dreamstime with a similar search and browse function.

24 8. Google has intentionally and aggressively interfered with Dreamstime's  
25 ability to fairly compete for visibility within Google's online search advertising market in  
26 several material ways. Among other things, Google has:

- 27 • manipulated Dreamstime's organic search ranking unfairly and illegally,  
28 while favoring Google's stock photo partners and promoting irrelevant



1 websites, to force Dreamstime to spend an unreasonable amount of money on  
 2 additional AdWords campaigns that would not otherwise have been  
 3 necessary;

- 4 • ranked webpages of a Dreamstime competitor prominently in organic search
- 5 results for Dreamstime's tradename;
- 6 • erroneously designated Dreamstime as a "hacked with spam" website despite
- 7 all evidence to the contrary and more than 12 months of unsuccessful
- 8 attempts to resolve the false designation with Google;
- 9 • cancelled Dreamstime's most successful ad campaigns without adequate
- 10 notice or explanation, thereby rigging the AdWords bidding process in favor
- 11 of Google and its stock photo partners;
- 12 • improperly suspended Dreamstime's mobile app based on unfounded
- 13 accusations of "policy violations," then removed it from the list of apps
- 14 obtained by searching "stock photos" in the app store;
- 15 • prevented Dreamstime from running successful DisplayAds campaigns while
- 16 allowing the *exact same* advertisements to be placed by Google's stock photo
- 17 partners; and
- 18 • overdelivered advertising campaigns on a regular and systematic basis.

19 9. In addition to its search and search advertising bias against Dreamstime,  
 20 Google Images has also misused licensed stock photos of Dreamstime and other websites by  
 21 making high-quality versions of them available in Google Images search results. By right-  
 22 clicking on high-resolution images of these proprietary photos in Google Images, searchers  
 23 can essentially steal on a whim. The Centre of the Picture Industry ("CEPIC") estimates  
 24 that 85% of pictures found online by visual search systems are unlawful copies and 80% of  
 25 those illegal images have been spread through search engines such as Google Images. This  
 26 unfair and deceptive practice exemplifies Google's immense monopoly power and abuse of  
 27 that power. Attached as Exhibit "P" hereto is a collection of statements from various  
 28 potential customers on the Internet exemplifying the customer confusion and disruption

1 caused by this practice. Getty Images sued Google in the European Union for its conduct,  
 2 alleging that it was anticompetitive, because it was distorted the marketplace and created  
 3 confusion that led to lost market share for legitimate resellers of licensed, copyrighted  
 4 images. As noted below, Google settled that action by partnering with Getty Images.

5 10. Google's use of the AdWords, DisplayAds, and AdSense programs to harm  
 6 Dreamstime and others is part of an overall, anticompetitive and exclusionary business  
 7 strategy that goes hand-in-hand with Google's online search bias scheme and its unfair  
 8 favoritism of Google Images and its stock photo partners. Google's goal is less to dominate  
 9 traditional stock photo sales, and more to grow its search monopoly by increasing its image-  
 10 related search dominance and consolidating the market for the supply of stock photos (a  
 11 valuable product it now offers directly to its ad customers) among its favored partners.  
 12 Google intends to restrict competition among itself, Yahoo! and Bing, and to extend its  
 13 dominance over its chief rivals. Its vehicle for doing so is the exclusion of Dreamstime and  
 14 several other non-partner stock photography websites (which also compete for some of the  
 15 same web traffic as Google). As these tactics injure competition in Google's market, they  
 16 simultaneously cause material injuries to Dreamstime and other stock photo suppliers in the  
 17 form of decreased or eliminated visibility in Google's search and ad results, overcharges for  
 18 AdWords, lost revenue, lost customers, potential search engine optimization ("SEO")  
 19 penalties, and loss of goodwill.

20 11. This anticompetitive and output-restricting conduct has resulted in fewer  
 21 relevant search results for online stock photography for Google's consumers, stifling of  
 22 innovation and technology, and harm to competition in the relevant market. It has also  
 23 resulted in large increases in market share for Google's stock photo partners and has  
 24 increased Google Images' dominance in image-based search vis-à-vis its traditional search  
 25 advertising rivals and stock photo sites that compete for a subset of Google's customers.  
 26 Because Dreamstime's exclusion happens within Google's market and also increases  
 27 Google's market position vis-à-vis competing online search advertisers, Dreamstime has  
 28 suffered antitrust injury. Google's conduct gives rise to civil liability for violation of Section

2 of the Sherman Act, breach of contract, breach of the covenant of good faith and fair dealing, and violation of California's strict and sweeping unfair competition laws.

## II. THE PARTIES

12. Plaintiff Dreamstime.com, LLC is a limited liability company incorporated under the laws of Florida with its principal place of business located at 1616 Westgate Circle, Brentwood, Tennessee 37027.

13. Defendant Google LLC is a Delaware limited liability company that is a wholly-owned subsidiary of Alphabet, Inc., with its principal place of business located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

14. Plaintiff Dreamstime is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this First Amended Complaint to allege their true names and capacities as they are ascertained. Plaintiff is informed and believes that each of the fictitiously named defendants is responsible in some manner for the injuries to plaintiff as alleged herein. Plaintiff further alleges that its injuries were proximately caused by each and all such defendants.

## III. JURISDICTION AND VENUE

15. This First Amended Complaint is filed and this civil action is instituted under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15, 26) to recover the damages caused by, and to secure injunctive relief against the named defendant's past, continuing, and on-going violation of Section 2 of the Sherman Act (15 U.S.C. § 2). This Court has original, diversity, and exclusive jurisdiction over the subject matter of this civil action under 28 U.S.C. §§ 1331, 1332, and 1337 because it involves claims arising under the Sherman Act (15 U.S.C. § 2), and diversity between the parties exists.

16. Venue is proper in this District as all parties consented to venue and jurisdiction in the state of California, County of Santa Clara, as the mandatory forum to enforce or interpret the operative agreements that form part of the basis of this action. In particular, Google's Advertising Program Terms (the "AdWords Agreement") contain a

1 forum selection clause calling for venue in Santa Clara County, California. The AdWords  
 2 Agreement also provides that California law governs the Agreement. All parties that desire  
 3 to use Google AdWords must first agree to the AdWords Agreement before they can create  
 4 an AdWords account at <https://adwords.google.com>.

5 17. Defendant maintains an office and transacts business on a systematic and  
 6 continuous basis within this District, and may be found here, within the meaning of 15  
 7 U.S.C. §§ 15, 22 and 28 U.S.C. § 1391. Further, the unlawful acts alleged herein were  
 8 performed and occurred in material part within this District.

#### 9 **IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

##### 10 **A. Google Maintains a Monopoly in the Market for Online Search** 11 **Advertising (in Which Dreamstime Participates)**

##### 12 **1. Google Has a Monopoly in the Online Search Market**

13 18. Google operates in multiple interrelated online markets. One of its most  
 14 important markets is the online search market, defined for purposes of this action as the  
 15 domestic market for search engine queries. As described below, Google monetizes its  
 16 dominant position in search – which is ostensibly free to users – with a commensurately  
 17 dominant position in the online search advertising market (or submarket), in which  
 18 Dreamstime is a consumer and direct purchaser of AdWords. Revenue from Google's ad  
 19 business grew by 21 percent from last year and accounts for 84% of Alphabet's total  
 20 revenue.<sup>5</sup>

21 19. Google owns and operates the world's largest search engine. Consumers use  
 22 search engines to find information on the Internet quickly. Consumers enter a query into a  
 23 search engine, typically a few keywords (*e.g.*, “stock photos”), and the search engine then  
 24 returns a line of results often referred to as search engine results pages (“SERPs”). Most  
 25 search engines, including Google, employ methods to rank the results to provide “useful and  
 26

27  
 28 <sup>5</sup> [https://www.washingtonpost.com/news/the-switch/wp/2018/02/01/google-parent-alphabet-reports-soaring-ad-revenue-despite-youtube-backlash/?noredirect=on&utm\\_term=.b5e0dfd31cee](https://www.washingtonpost.com/news/the-switch/wp/2018/02/01/google-parent-alphabet-reports-soaring-ad-revenue-despite-youtube-backlash/?noredirect=on&utm_term=.b5e0dfd31cee) (last accessed September 28, 2018).

1 relevant” results first (its “search results”). Most search engines, including Google, are  
 2 commercial ventures supported by advertising revenue of various types.

3 20. Google’s search engine uses a number of proprietary algorithms to rank  
 4 websites in its search engine results. Google claims its algorithms “sort through the  
 5 hundreds of billions of webpages in our Search index to give you useful and relevant results  
 6 in a fraction of a second.” A website’s Google search ranking<sup>6</sup> has a direct, measurable  
 7 impact on the amount of web traffic to that website. The Google ranking is so important to  
 8 businesses (and especially online businesses) that entire industries exist relating to  
 9 “optimizing” a website’s Google search ranking. The other major online search engine  
 10 companies, such as Yahoo! and Bing, deploy similar algorithms that rank relevant results  
 11 based on a user’s search.

12 21. According to netmarketshare.com, Google owns 80.52% of the global market  
 13 for online search engines. Its largest competitors Baidu (5.94%), Yahoo (5.35%) and Bing  
 14 (6.92%) collectively muster approximately 17% of the market share. Thus, Google has a  
 15 global monopoly in the online search market. Google also has a monopoly in the United  
 16 States online search market. For example, in 2017, Google’s share of the online search  
 17 market performed from laptops or desktops fluctuated between 78.7% and 69.21 %  
 18 according to netmarketshare.com. Google’s market share in the U.S. mobile search market  
 19 was 93%.

20 22. There are a small number of participants in the concentrated online search  
 21 market, and the market has high barriers to entry. Engineering talent is limited and data  
 22 centers that can simultaneously support millions of searches are expensive. Moreover,  
 23 search engines have evolved such that most modern search engines are based on machine-  
 24 learning algorithms combining thousands of factors. Some of the most prominent factors  
 25 are historical search query logs and their corresponding search result clicks. One study  
 26 noted that historical search data improves search results up to 31%, such that “today’s  
 27 \_\_\_\_\_

28 <sup>6</sup> Google recently changed its terminology to use the term “position” rather than “rank” to  
 refer to where a page falls in search results. Both terms are used interchangeably herein.

1 search engines cannot reach high-quality results without this historical user behavior.”<sup>7</sup> The  
 2 result is that new market participants, even those with better algorithms, “cannot enter the  
 3 market and compete with the established players, with their deep records of previous user  
 4 behavior.” Data on user behavior in turn creates enormous network effects that cannot be  
 5 replicated by new entrants into the market. Google's impenetrable online search empire is  
 6 enhanced by network effects because the utility of any user of its search services increases  
 7 with the number of other users of those services. In other words, Google's ability to track,  
 8 collect, and use behavioral and search pattern information from its users expands its data  
 9 base to the detriment of its competitors.<sup>8</sup>

## 10 **2. Google Has a Monopoly in the Online Search Advertising Relevant** 11 **Market (or Submarket)**

12 23. The online search advertising market is an appropriate relevant  
 13 product/service market in which to assess Google's market power, and its selection in lieu  
 14 of online search as a whole has no legal or practical effect on the Sherman Act Section 2  
 15 monopoly/market power analysis in this case. Google's dominance in the online search  
 16 market translates to a commensurate dominance in the interrelated online search advertising  
 17 market. Google's share of the U.S. online search advertising market has steadily increased,  
 18 from 75.8% in 2016 to an estimated 80.2% by 2019.<sup>9</sup> Dreamstime is a direct purchaser and  
 19 consumer in the online search advertising market and therefore is also a participant in that  
 20 market.

21 24. Though the online search market and online search advertising markets are  
 22 described separately for precision, they are essentially one and the same. In essence,  
 23

24 <sup>7</sup> See Radinsky, Kira, “Data Monopolists Like Google Are Threatening the Economy,”  
 25 Harvard Business Review March 2, 2015.

26 <sup>8</sup> For example, several years ago Microsoft decided to launch a new search engine named  
 Bing to compete with Google, and formed an alliance with the internet company Yahoo!.  
 27 The alliance never performed to Yahoo!'s expectations, lagging behind revenue projections,  
 and the alliance was restructured in 2015. Bing still lags well behind Google in the online  
 search market, demonstrating the significant barriers to entry and expansion in the market.

28 <sup>9</sup> See, <https://searchengineland.com/google-search-ad-revenues-271188> (last accessed on  
 March 19, 2018).



1 Google is monetizing a monopoly position in online search by selling advertising on top of  
2 search results. The search function is “free” to the searcher, but the searcher provides  
3 extremely valuable private information about the searcher’s behavior when he or she  
4 conducts a search and is also subjected to advertising paid for by purchasers of the ads. No  
5 one would go to Google just to see ads, and no ads would be placed on Google without  
6 these “free” search services.

7 25. The U.S. Department of Justice (“DOJ”) recognized a relevant market of  
8 online search advertising in fighting a proposed advertising agreement between Yahoo! and  
9 Google in 2008. The U.S. Federal Trade Commission (“FTC”) has also recently recognized  
10 online search advertising as an appropriate antitrust relevant market, in the context of  
11 Google’s acquisition of traditional online display-ad marketing company, DoubleClick. On  
12 June 27, 2017, the European Commission fined Google €2.42 billion for “breaching EU  
13 antitrust rules” and abusing its dominance in search by giving an illegal advantage to its own  
14 comparison-shopping service, Google Shopping. Google Images is remarkably similar to  
15 the Google Shopping service at issue in the European Union. (*See* screenshots at Exhibit  
16 “B”.)

17 26. Google has exponentially expanded on the success of its search engine by  
18 acquiring competing search engines, online advertising entities, mobile technologies, video  
19 sharing technologies and platforms, social media and gaming communities and artificial  
20 intelligence companies at an extraordinarily high rate. As of December 2016, Google or its  
21 parent had acquired over 200 companies, while only divesting four of them. Google has  
22 exploited ownership of the proprietary technologies of those companies, as well as their user  
23 bases, by integrating them into its increasingly vast and dominant position in online search,  
24 advertising, e-commerce and mobile devices. By so doing, it has progressively increased its  
25 market power in innumerable related businesses in those fields, allowing it to dictate the  
26 economics of those businesses and to manipulate the content its users can see.



1                   **3. Dreamstime and Other Stock Photography Websites Participate in**  
 2                   **the Online Search Advertising Market as Direct Purchasers-**  
 3                   **Consumers of Google AdWords**

4           27. Dreamstime has standing to sue as a direct purchaser-consumer and  
 5 participant in the online search advertising market. Dreamstime competes for Google's  
 6 AdWords with other online stock photo rivals, as well as with Google and its partners.<sup>10</sup>  
 7 Indeed, the AdWords Agreement states, "Google or its affiliates may participate in Program  
 8 auctions in support of its own services and products." Dreamstime also competes in the  
 9 online stock photography business, defined for purposes of this action as the online business  
 10 of selling and distributing licensed digital images. Market participants in this business  
 11 include Dreamstime, Shutterstock, Getty Images, Adobe and other smaller competitors.  
 12 Shutterstock, Getty Images and Adobe together control the bulk of the online stock  
 13 photography business, and it is a highly concentrated industry. As described by  
 14 Shutterstock, "stock photos are images that anyone can license for creative use. Rather than  
 15 hire a photographer, designers can search a large database of photos and quickly find one  
 16 that works for their project."<sup>11</sup> Shutterstock's website also describes the crucial role that  
 17 Internet search engines play in the online stock photograph market: "[t]oday, Internet search  
 18 engines allow anyone to find the perfect stock photo in seconds."<sup>12</sup>

19           28. Dreamstime is one of the leaders among online stock photography repositories  
 20 and has been a reliable supplier of stock photos since 2000. It serves a variety of clients,  
 21 from independent private sector customers to Fortune 100 companies. One of the most  
 22 common uses of stock photos is digital display advertisements like those Google sells. As  
 23 of March 2018, Dreamstime had 20,000,000 registered members, more than 400,000  
 24 contributing photographers and over 75,000,000 photos, illustrations, clip arts, and vectors.

26  
 27 <sup>10</sup> One example of Google's competition in the mobile space is Google's own photo app,  
 which appears when one searches for "stock photos" in the Google Play app store.

28 <sup>11</sup> See, [www.shutterstock.com/support/articles/en\\_US/kbat01/What-are-stock-photos](http://www.shutterstock.com/support/articles/en_US/kbat01/What-are-stock-photos). (last  
 accessed on March 19, 2018).

<sup>12</sup> *Id.*

1 Dreamstime also hosts millions of free images on its websites (which, in addition to  
2 Dreamstime.com, include dreamstime.com, Megapixl.com, Stockfreeimages.com and  
3 Timelineimages.com). Dreamstime and other stock photography websites provide a critical  
4 input to online search advertisers like Google, Yahoo!, and Bing, in the form of stock photos  
5 that can be integrated into the display ads they sell to their ad customers. Google's strategic  
6 partnerships with Shutterstock and Getty (described below) give it a unique advantage over  
7 its competitors in this respect, allowing it to integrate millions of stock photos into its  
8 search-based display ads.

9         29. Dreamstime has worked diligently for almost two decades to establish itself as  
10 a leader in online stock photography. Like all its competitors, Dreamstime relies heavily  
11 upon online search engines and search engine advertising to build its name recognition and  
12 generate new customers and licenses. As much as 99% of Dreamstime's business comes  
13 from the Internet. As such, search engines are a *critical* component of Dreamstime's sales  
14 and customer acquisition strategy (as well as its licensed photo acquisition strategy).  
15 Roughly two-thirds of Dreamstime's customers find their way to the website from a search-  
16 engine search. Even customers with active Dreamstime accounts will often conduct a  
17 Google search for "Dreamstime" (sometimes along with other search terms) instead of  
18 typing "Dreamstime.com" in their browser address bar. Nearly all modern web browsers  
19 accept search strings into the address bar and automatically return a search from the use's  
20 default search engine.

21         30. One of Dreamstime's most important unique selling points is its competitive  
22 pricing. Most of Dreamstime's customers view its pricing as Dreamstime's most important  
23 distinguishing feature over other online stock photography competitors (though it may soon  
24 lose that selling point due to the acts alleged herein).

25         31. Stock photography websites provide a critical input to Google's online  
26 advertising industry, because they have hundreds of millions of licensed images available to  
27 integrate into search-based ads that include images. They are natural and highly valuable  
28 partners for online search advertisers, because they have accrued vast repositories of

1 licensable and approved-for-commercial-use images. Shutterstock's website boasts over  
 2 183 million images. Alamy.com has a library of more than 150 million images. Getty  
 3 Images has an archive of over 80 million still images and illustrations and more than 50,000  
 4 hours of stock film footage. And, as noted above, Dreamstime has archives of over  
 5 75,000,000 photos, illustrations, clip arts, and vectors. Network effects create the most  
 6 significant barrier to entry in the stock photography business, because photographers only  
 7 want to license their photos to websites that already attract a large number of potential  
 8 purchasers.

9 **B. Google's Economic Interests in its Online Search Advertising Monopoly**  
 10 **are Inextricably Intertwined with Competition in the Online Stock**  
 11 **Photography Business**

12 **1. With Its Shutterstock and Getty Images Partnerships, Google Now**  
 13 **Offers Stock Photos to Its Ad Customers**

14 32. Now that Google has access to all of Shutterstock and Getty Images' stock  
 15 photos, it has instantly become one of the largest distributors of stock photos to customers  
 16 looking to use those photos in online ads. On July 12, 2016, Shutterstock publicly  
 17 announced a multi-year licensing agreement between it and Google.<sup>13</sup> Google and  
 18 Shutterstock had been discussing this potential arrangement and testing their potential  
 19 partnership for several months prior. Among other things, the deal provides advertisers with  
 20 access to Shutterstock's library of online images to use with their advertisements running  
 21 through Google's AdSense, AdWords and AdMob platforms. The day after the deal was  
 22 announced, Shutterstock's stock price rose 14.2%. On information and belief, the licensing  
 23 agreement allows Google to receive revenue from the licensing of Shutterstock's online  
 24 stock photographs, thereby making Google a participant in the online stock photograph  
 25 business. On information and belief, the licensing agreement calls for Shutterstock to share  
 26 \_\_\_\_\_

27 <sup>13</sup> See, e.g., Sullivan, Laurie. "Google, Shutterstock, Licensing Deal Automatically Chooses  
 28 Images For Ads" available at  
<https://www.mediapost.com/publications/article/280120/google-shutterstock-licensing-deal-automatically.html>  
 (last accessed on March 19, 2018).

1 user data with Google, which further allows Google to maintain its monopoly in the online  
2 search advertising market.

3 33. In or around the first week of February 2018, Google and Getty Images  
4 announced a “multi-year global licensing partnership, enabling Google to use Getty Images’  
5 content within its various products and services.”<sup>14</sup> That deal “effectively” ended a dispute  
6 between Getty Images and Google in the European Union involving Google Image’s use of  
7 images “scraped” from Getty Images’ websites or their customers’ websites. Getty Images’  
8 CEO, in announcing its partnership with Google, cited its own “market leading” position  
9 and the fact that the partnership is likely to increase its dominant position: “We will license  
10 our market leading content to Google, working closely with them to improve attribution of  
11 our contributors’ work and thereby growing the ecosystem.” On information and belief, the  
12 licensing agreement allows Google to receive revenue from the licensing of Getty Image’s  
13 online stock photographs. On information and belief, the licensing agreement calls for  
14 Getty Images to share user data with Google, which allows Google to further maintain its  
15 monopoly in the online search advertising market.

16 34. Google’s strategic alliances with Shutterstock and Getty Images provide it  
17 with a key advantage over its online search advertising competitors, by allowing it to  
18 integrate hundreds of millions of licensed images into its search advertising network.  
19 Google now offers those same stock photos directly to its advertising customers who wish to  
20 integrate them into Google display ads.

## 21 2. Google (through Google Images) Competes with Online Stock 22 Photography Websites for the Same Web Traffic

23 35. Images are among the most common things people search for on the Internet.  
24 Google recognizes the importance of image-related searches to its search dominance, as  
25 seen in the design of its Search Results page and the prominence of its Google Images  
26 feature. Every Google Search Results page contains tabs for the most prominent  
27 \_\_\_\_\_

28 <sup>14</sup> See, [www.searchengineland.com/google-getty-images-enter-multi-year-global-licensing-partnership-291831](http://www.searchengineland.com/google-getty-images-enter-multi-year-global-licensing-partnership-291831). (last accessed on March 19, 2018).

1 subcategories of search. (*See* Exhibit “B.”) The “Images” tab, which leads to a set of  
 2 Google Images results, is a prominently featured subcategory in Google’s search results. In  
 3 addition, for keyword searches related to images, a set of photos from Google Images is  
 4 displayed before Google’s standard search results. Google has built Google Images into the  
 5 largest repository of high-resolution images available on the Internet. Google Images is a  
 6 key driver of web traffic to Google, which traffic it monetizes through search advertising.

7         36. Dreamstime and other stock photography websites compete for the same web  
 8 traffic as Google, in that they provide the same search-and-browse functionality as Google  
 9 Images. They are repository sites, places where a consumer can search for and browse  
 10 millions of images. As noted below, Dreamstime’s website looks and works almost exactly  
 11 like Google Images (except that Dreamstime has the creator’s consent to sell their photos  
 12 and pays creators for the use of their image). In addition to its licensed stock photos,  
 13 Dreamstime also offers millions of free images, just like Google Images, except that  
 14 Dreamstime images are offered with a proper mechanism for licensing the image for use,  
 15 receiving consent of the images’ owners, payment of royalties, and obtaining release of  
 16 rights from models who may appear in the images. Recently, Dreamstime also developed  
 17 an image-based search function that rivals a similar function of Google Images, whereby  
 18 users can use an image to search for similar images. If sites like Dreamstime gained  
 19 sufficient brand recognition and awareness, many consumers could start there to search for  
 20 stock photos, skipping Google Images as a middle step. This would take away searches  
 21 from Google, which would take away search advertising revenue from Google, because  
 22 every search pulls up ads that increase Google’s online search advertising monopoly. In this  
 23 sense, Google Images’ dominance depends in significant part upon users *not* choosing to  
 24 search stock repository websites directly. As noted below, one important way that Google  
 25 keeps Google Images from losing web traffic to stock photography repositories is partnering  
 26 with some of these entities and excluding others like Dreamstime (a lower cost stock  
 27 photography repository) that compete with Google Images for the same web traffic. These  
 28 strategic partnerships give Google more control over the stock photography market and

1 prevent the most dominant players from competing with Google Images.

2 **C. Google Engages in Anticompetitive and Exclusionary Conduct in the**  
 3 **Online Search Advertising Market**

4 37. Google wields its market power in online search advertising discriminatorily  
 5 by giving some participants in its search and search advertising market higher search  
 6 rankings while lowering the search rankings of others to the point that they become  
 7 invisible. This conduct excludes competition, increases advertising purchasers' reliance on  
 8 AdWords, creates an unlevel playing field that favors its stock photo partners, and reduces  
 9 consumer choice in the marketplace for online search and search advertising visibility.  
 10 Google also rigs its AdWords auction program to unfairly privilege its stock photo partners  
 11 and to essentially exclude Dreamstime (and others) from search results for the most  
 12 common keywords related to stock photography. Finally, through affirmative  
 13 misrepresentations, omissions and other fraudulent concealment, Google has induced  
 14 Dreamstime to overpay for AdWords in a systematic fashion, which money Dreamstime  
 15 would not have spent but for Google's intentional deception.

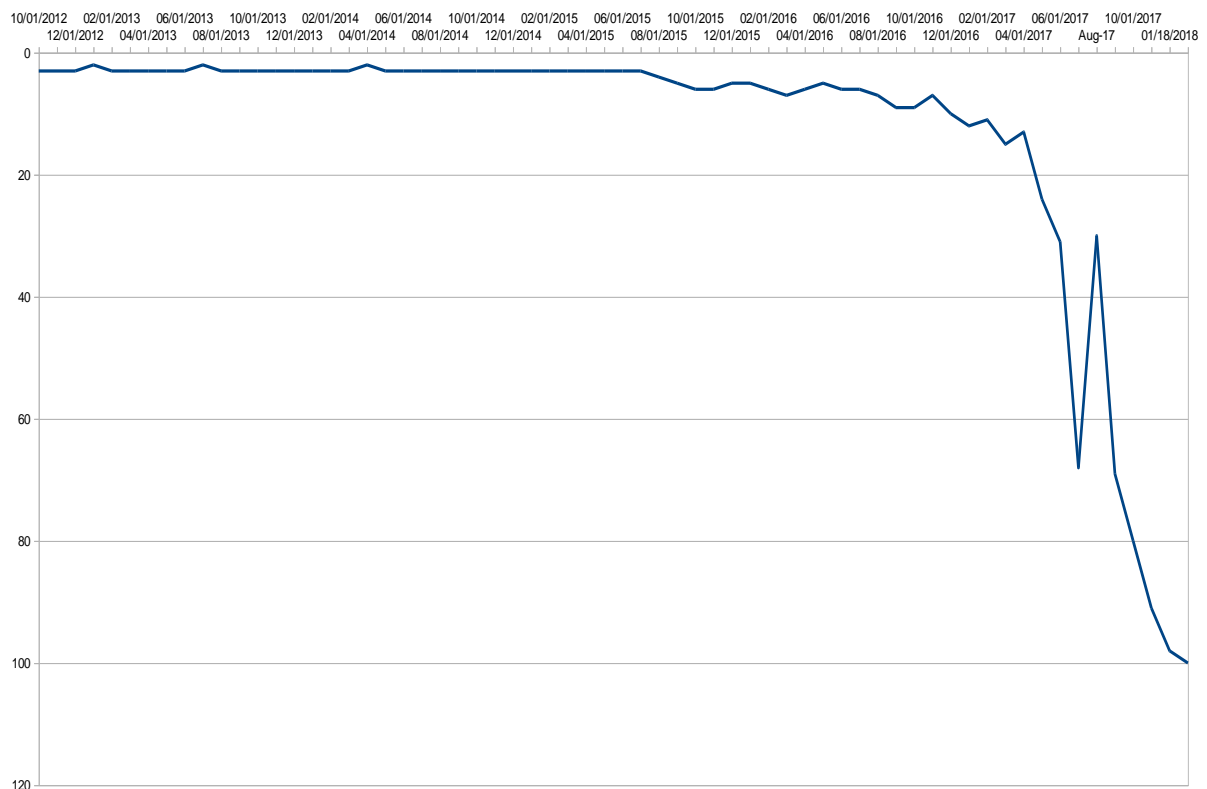
16 **1. Google Tanked Dreamstime's Search Results and Unevenly**  
 17 **Applied Its Search Policies to Disadvantage Dreamstime and Favor**  
 18 **Its Stock Photo Partners in Organic Search**

19 38. From approximately 2005 to 2015, Dreamstime consistently ranked in the top  
 20 three in Google's organic search ranking for searches related to stock photography, and  
 21 always appeared on the first page of the search results. Due to Dreamstime's longstanding  
 22 status as a top five vendor of online stock photography, its ranking made sense. Along with  
 23 three other pioneer microstock agencies, iStock, Fotolia and Shutterstock, Dreamstime  
 24 challenged the traditional stock photography agencies and was a major player in the online  
 25 stock photography industry. However, iStock was acquired by Getty Images, Fotolia was  
 26 acquired by Adobe, and Shutterstock and Getty Images have partnered directly with Google  
 27 – leaving Dreamstime on its own as the only significant independent microstock agency.

28 39. Given its market position and the quality of its offerings, Dreamstime is

undoubtedly relevant to users that google online stock photographs. Dreamstime's web traffic prior to Google's conduct reinforced this conclusion, as many people that googled online stock photography became Dreamstime's customers.

40. Yet, since approximately August 2015, Dreamstime's organic search rankings on Google has inexplicably plummeted on the most common keyword searches related to stock photography. For example, from approximately 2005 to 2015, Dreamstime's Google ranking for "stock photos" (far and away the most searched-for term with the highest conversion rate among all terms related to stock photography) was either first, second, or third. By comparison, in or around June 2017, Dreamstime plummeted to the fourth page for the same search term despite being in the stock photography business for over a decade and offering a stock photography library of over 70 million images. Bing and Yahoo! both ranked Dreamstime as the fourth result for this same search term, while Baidu ranked Dreamstime eighth. Both rankings would generally place Dreamstime prominently on the critical first page of search results. This graph shows Dreamstime's position in Google search results for "stock photos" over the last five years, dropping from to third to 91<sup>st</sup>:





41. Dreamstime's precipitous drop is not limited to the "stock photos" term. The same holds true for the other most relevant terms for the stock photo industry as measured by Google's daily traffic estimator, including "free stock photos," "royalty free images," "free stock images," "stock images," "photo stock," "stock photography," "royalty free photos," and "graphic stock." Dreamstime no longer appears in the top two pages of results for any of these searches. For example, Dreamstime's search ranking for "stock images" was recently 91st on Google, compared to fifth on Bing, fourth on Yahoo!, and third on Baidu.<sup>15</sup>

42. Dreamstime's plummet in Google's organic search ranking significantly reduced the number of new customers who sign up for Dreamstime and make a purchase within one month. For example, in April 2015, before Dreamstime's ranking drop, it gained a substantial number of new buyers. In April of 2016, however, it gained 30% fewer buyers. This steady decline has caused Dreamstime to lose tens of millions of dollars in potential revenue and as much as hundreds of millions in market value. It is safe to assume that other downgraded sites (*e.g.*, 123RF, Canstockphoto, Depositphotos) experienced a similar decline. This result not only harms Dreamstime and other competitors, it harms consumers, who now may choose only from Google's partners or Google Images.

43. Of crucial importance is Dreamstime's drop from page one of Google's rankings to page two or lower. According to research by respected online ad network Chitika, 92% of all Google search traffic is limited to the first page of the results, with the top three results receiving 61% of the clicks. Moving from page one to two, the traffic drops by 95%. For a decade, Dreamstime ranked in the top two to three Google search

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<sup>15</sup> It is important to note that the URL for Dreamstime's website homepage (<https://www.dreamstime.com>) has completely disappeared from search results for the above-listed terms on Google. Dreamstime only appears at all within the search results by virtue of a "stock-photos" sub-page, which is of significantly-diminished value than a ranking of Dreamstime's home page, and which was only created in an attempt to correct for the invisibility of Dreamstime's home page when googling for "stock photos." For obvious reasons, the complete elimination of any link to Dreamstime's main homepage demotes that home page and all other pages within the website in significant ways, and a link to a mere subpage does not remotely address this issue.

1 results for the most important search term, “stock photos.” By relegating Dreamstime well  
 2 beyond page two (and removing its homepage altogether), Google has effectively banished  
 3 Dreamstime from its marketplace.

4 44. To push Dreamstime entirely out of view in its results, Google inserts ahead of  
 5 Dreamstime completely useless “Junk Websites,” defined for purposes of this lawsuit as  
 6 results responsive to search terms related to online stock photographs that are of low  
 7 relevance to customers searching for sources of licensable digital images. Dreamstime has  
 8 recently ranked behind clearly inferior competitors including sites with only 30,000 free  
 9 images (compared with Dreamstime’s more than 2 million free images), old sites with only  
 10 140 images total, and multiple URLs that refer to the same photo site. Before Google’s  
 11 exclusionary conduct, these sites were never ranked ahead of Dreamstime in online stock  
 12 photography searches, and rightfully so. Dreamstime is clearly more “relevant” to “stock  
 13 photos” than a blog article entitled “Stock photos that don’t suck” that has not been updated  
 14 since 2014.<sup>16</sup> Were Google’s algorithm truly ranking relevant and useful results, these sites  
 15 *would never* be ranked ahead of Dreamstime. The obvious anticompetitive purpose and  
 16 effect of this conduct is to entirely eliminate millions of high-quality, unique stock photos  
 17 from a consumer’s view, thereby eliminating a potential threat to Google Images and  
 18 promoting Google’s stock photo partners.

19 45. Google has even gone so far as to artificially boost the organic rank of a  
 20 Shutterstock page to appear within the top 10 results (*i.e.*, first page of search results) for  
 21 Dreamstime’s own tradename, diverting users who were specifically searching for  
 22 “dreamstime” over to one of Dreamstime’s competitors.

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24 <sup>16</sup> Other less relevant websites that are ranked higher than Dreamstime in a search for “stock  
 25 photos” include: (1) “Death to Stock” – a website that emails free photographs to users and  
 26 has a library of just 1500 photographs; (2) Vince Vaughn and Co-stars Pose for Idiotic  
 27 Stock Photos You Can Have Free – an article about a PR campaign for a movie released in  
 28 2015; (3) the reddit webpage “WTF Stock Photos” that collects “unnecessary stock photos  
 taken without a realistic intention of selling” for amusement; (4) the twitter account page for  
 “darkstockphotos,” a twitter user that posts “extremely f\*\*\*\*\* up stock photography”; and  
 (5) an October 20, 2014, article by Casey Ark on the website entrepreneur.com titled “14  
 Amazingly free stock photo websites.”

1           46. Google’s manipulation of Dreamstime’s organic search ranking has begun to  
2 negatively impact Dreamstime’s ranking on other search engines. This was an inevitable  
3 result of Dreamstime’s effective exclusion from Google’s search rankings: all search  
4 engines track consumer behavior and to the extent that Dreamstime’s traffic has diminished  
5 because of its fall in Google’s search ranking, its search ranking on other engines will  
6 naturally fall as well.<sup>17</sup>

7           47. Google’s treatment of Dreamstime is markedly different from Google’s  
8 treatment of its stock photo partners. Through its contractual multi-year partnerships with  
9 Shutterstock and Getty Images and its promotion of Google Images, Google has become a  
10 major force in searches for stock photos online, with the distinct advantage of controlling  
11 organic and paid searches relevant to that online industry.

12           48. Shutterstock was recently the second result when a user searched for “stock  
13 photography” on Google. Wikipedia ranked first, meaning Shutterstock was the first  
14 commercial entity ranked on a search for “stock photography.” Getty Images also ranked  
15 highly in Google’s search results (typically in the first two or three). Adobe ranked fourth.  
16 Other Junk Websites or public domain images websites (which are not stock photography  
17 websites) rounded out the top 10.

18           49. Searching Google for “royalty free stock photos” turns up search results that  
19 do not include any providers of royalty free stock photos on the first page of results.  
20 Dreamstime – a site that provides the exact class of products the user searched for – does  
21 not appear in the first five pages of Google search results pages for “royalty free stock  
22 photos.” Every search result in the first 10 spots points to a website that provides public  
23 domain images, which are not suitable for most commercial uses that a stock photo would  
24

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25 <sup>17</sup> In addition, some changes that Dreamstime made to its website to in attempts to reverse  
26 its decline in Google’s search rankings (some of which were recommended by Google) had  
27 consequences for its ranking on other search engines. For example, when Dreamstime  
28 implemented the http/2 upgrade at Google’s suggestion, it was removed from Bing’s search  
listing for six months because Bing was not able to track the new technology. Unlike  
Dreamstime’s experience with Google, however, Dreamstime was able to address its issue  
with Bing quickly and received input and advice that resolved that issue.

1 be suited for.

2 50. A knowledge graph – which is an entry that appears at the very top of organic  
3 search results for generic terms like “stock photos”<sup>18</sup> – also appeared below the first search  
4 result very high on the page of “stock photography” search results. The first question in that  
5 knowledge graph was “are there free images on Shutterstock?” None of the other three  
6 questions in the knowledge graph mentioned a stock photography website by name. An  
7 example of a knowledge graph is attached hereto as Exhibit “A.” In Exhibit “A,”  
8 Shutterstock and Bigstock (which Shutterstock owns) are placed prominently alongside  
9 search results for generic market terms, giving them an additional unfair advantage over  
10 other stock photo suppliers. Knowledge graphs are free advertising for Google’s partners,  
11 giving them an unfair advantage over competitors like Dreamstime. The inclusion of  
12 images (*i.e.*, company logos) makes knowledge graphs in search results and paid  
13 advertisements (which are plain, vanilla text) very noticeable and attractive to users and  
14 draws even more clicks away from companies who are not Google’s partner.

15 51. In a recent Google search for “stock photos,” iStock (owned by Getty Images)  
16 and Shutterstock ranked consistently in the top five. Bigstock (owned by Shutterstock) was  
17 also in the top 10. Of the top 10 results, only iStock (owned by Getty Images), Shutterstock,  
18 Bigstock (owned by Shutterstock) and Adobe are online stock photography sites – that is, in  
19 the crucial first page of Google search results, the only stock photography sites are  
20 Shutterstock, Getty Images and Adobe.

21 52. Similarly, Google often alerts users to the existence of competitors when users  
22 search for a specific brand under a “users also searched for” tag. When users search for the  
23 term “Dreamstime” in the search results, Google will inform the user that other users have  
24 searched for the term “Shutterstock.” However, when a user searches for “Shutterstock,”  
25 Google does *not* include a tag informing users that others had also searched for Dreamstime.

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27 <sup>18</sup> See, Knowledge Graph feature description, available at  
28 <https://www.google.com/intl/es419/insidesearch/features/search/knowledge.html>. (last  
accessed on March 19, 2018).

1 Similarly, Shutterstock is displayed prominently in organic search results for “dreamstime,”  
 2 which is a result that is very difficult to achieve from traditional SEO efforts. Again, this is  
 3 a strategy to draw clicks away from Dreamstime and to divert and funnel those clicks to  
 4 Shutterstock.

5 53. Google also selectively enforced its policy against duplicative content in  
 6 organic search rankings to Dreamstime’s detriment. Pursuant to that policy, Google has  
 7 falsely stated that it is committed<sup>19</sup> to preventing substantive blocks of content within or  
 8 across domains that either completely match other content or are appreciably similar. Yet,  
 9 Google does not enforce this policy as to Shutterstock and Bigstock. They offer the  
 10 same images for license under two different domains without any appreciable difference, yet  
 11 they both recently appeared as the first and second results when searching for the phrase  
 12 “stock photos.” As a result, Shutterstock would generally receive at least 50% of the  
 13 Google traffic for the search term “stock photos.” As shown in Exhibit “C” hereto, Google  
 14 inexplicably includes as many as three to five links to the same site on its first page of  
 15 search results, further pushing Dreamstime (and others) down in results and making the  
 16 results less useful. In some cases, only a single site is displayed on a whole page of results  
 17 (*i.e.*, 10 out of 10 spots), which further demotes Dreamstime. *See* Exhibit “D”. These  
 18 results violate Google’s own policy of allowing only two links from the same website owner  
 19 (a policy that was intended to ensure diverse results).

20 54. For twelve months beginning in 2015, Google also erroneously flagged  
 21 Dreamstime’s website as being “hacked with spam” in violation of another of its policies  
 22 when in fact this was not the case. Google knew Dreamstime had not violated this policy  
 23

24 \_\_\_\_\_  
 25 <sup>19</sup> *See, e.g.*, comments of Google executive John Mueller in Oct. 6, 2015 episode of “Google  
 26 Webmaster Central office hours” video series (available at  
 27 <https://www.youtube.com/watch?v=cxWo4ttPgAc> (last visited Sep. 26, 2018) (“[I]f within  
 28 your content the majority of the content is copied from other sources or the majority of the  
 content is kind of rewritten, repurposed from other sources, then when our algorithms look  
 at your website they’re like, well I’ve seen everything from this website before. There is  
 nothing of value here that we would miss if we didn’t Index this website because all of this  
 content is based on something that’s available on different parts of the web.”)

1 but nevertheless applied it to Dreamstime (while not applying it to its other stock photo  
 2 partners with similar content) in order to intentionally tank Dreamstime’s search ranking.  
 3 Because Dreamstime’s website naturally included images relating certain terms commonly  
 4 linked to spam – such as pharmacy, casino and male pattern baldness images – Google  
 5 apparently flagged Dreamstime’s website as “hacked by spam” when of course it was not.  
 6 The “hacked by spam” flag showed up on a performance console provided to Dreamstime  
 7 by Google, with a link allowing Dreamstime to report that its site was not in fact hacked by  
 8 spam. Dreamstime repeatedly clicked this link and for a year attempted unsuccessfully to  
 9 notify Google of the “error,” to no avail. Finally, a Dreamstime executive notified another  
 10 Google executive over Twitter of this obvious mislabeling, and Google only then corrected  
 11 it. However, Dreamstime suffered a marked diminution in its search ranking for a sustained  
 12 period of time as a result of this “error.”

13 55. Literally any Google user can easily *see* how Google’s discrimination against  
 14 Dreamstime impacts consumers. Take, for example, the term “peppers” (plural). When one  
 15 performs a Google Image search for “peppers,” the first 100 image results are pictures of  
 16 bell or jalapeno peppers. This result shows that Google’s algorithm finds pictures of bell  
 17 peppers highly relevant to the Image Search for the word “peppers.” Exhibit “I” contains a  
 18 screen capture showing the first images returned for a search for the term “peppers” on  
 19 Google Images.

20 56. Dreamstime’s website also provides a function very similar to Google Images.  
 21 Exhibit “J” is a screen capture showing the first results returned when a user searches for  
 22 “peppers” on dreamstime.com. Almost all the images on the first page of results are of bell  
 23 or jalapeno peppers (like the Google Images search). Dreamstime’s and Google’s search  
 24 algorithms both consider images of bell or jalapeno peppers highly relevant to a search for  
 25 the term “peppers.” Similarly, neither Google Images nor Dreamstime searches for  
 26 “peppers” include images of *peppercorns* in the first page of image results. That is,  
 27 Dreamstime’s search returns the same types of photos that Google’s own algorithm finds  
 28 highly relevant.



1           57.     Shutterstock also allows users to search its stock photographs by keyword.  
2     Searching for “peppers” on Shutterstock returns some pictures of bell and jalapeno peppers  
3     in the first page of results, but also returns some anomalous images including several  
4     photographs of peppercorns, what appears to be a white robot named “Pepper,” and many  
5     photographs of salt and pepper shakers. Exhibit “K” is a screen capture of these results for  
6     Shutterstock. Shutterstock returns *less relevant* results than Google Images or Dreamstime  
7     for this search.

8           58.     Based on the “peppers” example, one would expect that Dreamstime’s website  
9     would be *more relevant* than Shutterstock’s when searching for stock photos of peppers and  
10    therefore appear higher in Google’s search results. This, however, is no longer the case. In  
11    a recent (non-image) Google search for the terms “peppers stock photos,” among the first  
12    ten web pages returned from this search, positions *two through five* were for Shutterstock  
13    websites. Dreamstime was not listed in the first *five* pages of results. Instead, many clearly  
14    less relevant websites were featured in the first five pages of the results. The harm to  
15    consumers is obvious. A consumer seeking to purchase stock photographs of bell or  
16    jalapeno peppers and using a commonsense search like “peppers stock photos” would never  
17    find Dreamstime. That consumer *would* be not so subtly steered by Google to its partner  
18    Shutterstock’s page as Shutterstock occupied slots two through five in the top 10 – even  
19    though Shutterstock’s website is not as helpful to the consumer.

20           59.     Dreamstime is not the only stock photo site Google has unfairly discriminated  
21    against in this fashion. Others, such as 123RF, DepositPhotos, and CanStockPhoto, have  
22    similarly experienced significant drops in their organic search rankings. The graph attached  
23    as Exhibit “L” shows how the ranking for the websites Dreamstime, 123rf.com,  
24    depositphotos.com and canstockphoto.com have changed over the time period September  
25    2016 to February 2018. The graph shows a drastic downward trend toward functional  
26    irrelevance for the most important Google search related to stock photography. These  
27    smaller competitors in the online stock photography industry have seen their ranking in the  
28    “stock photos” search decline tremendously from September 2016 to February 2018. The



1 graph at Exhibit “M” shows the ranking for Dreamstime, Shutterstock, stock.adobe.com,  
2 and iStock (owned by Getty Images) over the same time. It shows that, while Dreamstime’s  
3 ranking for “stock photos” precipitously declined, Shutterstock and Getty Images (through  
4 its website istockphotos.com) enjoyed lasting stability near the top of the rankings.

5 60. Dreamstime is unaware of any innocuous explanation for its dramatic decline  
6 in search ranking – nothing about its website or how customers use its website explain its  
7 decline in stock photo searches (and Google has never cited any such innocent reason in the  
8 course of Dreamstime’s efforts to address the issue with Google). If anything, Dreamstime  
9 has improved in all of the metrics that Google claims are important to search ranking.  
10 During the relevant period, Dreamstime’s user engagement has improved over time. Its  
11 “bounce rate” (a metric that indicates that percentage of people who land on a web page and  
12 then leave without clicking anywhere else on the website) declined, while the average time  
13 users spent on Dreamstime’s website stayed basically constant. Dreamstime’s page load  
14 times have also decreased dramatically since Fall of 2015 when the issues with its search  
15 ranking became noticeable. In other words, while Dreamstime’s page load times and  
16 bounce rate were exceptionally good even prior to Fall of 2015 (and were not a cause of any  
17 demotion in ranking), these metrics became even better over the period in which its site was  
18 demoted in Google’s rankings. While Google might attempt to point to some material  
19 change in Dreamstime’s metrics to justify its changed ranking in organic search, or claim  
20 that it fine-tuned its search engine algorithm for some legitimate purpose in a way that  
21 impacted Dreamstime’s ranking, none of these explanations make sense. First, any such  
22 explanation would need to account for the fact that Shutterstock and Getty Images have not  
23 suffered any similar downgrade in rankings. Second, any potential explanation would need  
24 to account for why clearly irrelevant and poor-quality results are ranked ahead of  
25 Dreamstime. Third, if some legitimate reason for Dreamstime’s dramatic plummet in  
26 Google’s organic search rankings existed (it does not), Google could have provided that  
27 explanation during Dreamstime’s extensive efforts to meet with Google to address the issue.  
28 It did not. Finally, if some Dreamstime’s plummet in ranking were due to some systematic

1 issue, one would expect its rankings on other online search sites to drop. They did not.

2 **2. Google Fraudulently Concealed and Intentionally Omitted Facts**  
 3 **Regarding Its Search Bias Scheme**

4 61. Google’s “support” services furthered its anticompetitive scheme by  
 5 fraudulently concealing its anticompetitive purpose. After Dreamstime sought answers  
 6 from Google regarding its dramatic plunge in search ranking, Google initially refused to  
 7 substantively discuss Dreamstime’s search ranking or provide any rational justification for  
 8 Dreamstime’s unfavorable ranking. When asked via Google’s support forum (the place  
 9 where Google insists that companies must go to ask for assistance) about Dreamstime’s  
 10 ranking, Google’s representatives have responded with sarcastic and dismissive non-advice  
 11 to questions about how such low-quality results can wind up so high in organic search  
 12 results.

13 62. Specifically, Exhibit “E” depicts a screen capture of a forum discussion  
 14 wherein Cliff Haley, Dreamstime’s SEO Director using the pseudonym “Wilbur  
 15 Cartwright,” is asking Google why StockPhoto.com ranks so highly for “stock photos”  
 16 when the site’s main domain is permanently set to redirect users to a very narrow subset of  
 17 images that are not very useful to a potential customer searching for “stock photos” (*i.e.*, a  
 18 specific page listing images that match the more specific search string “christmas images”).  
 19 In other words, the site in question employed a “hacking” technique to artificially increase  
 20 its search ranking – a practice that is purportedly against Google’s policies.<sup>20</sup> Rather than  
 21 acknowledging a problem with the search results or volunteering substantive fixes for such a  
 22 situation, John Muller, an executive on Google’s organic search team, responded to the  
 23 forum question by suggesting that site owners who rank below the offending site should  
 24 “ask them” why they would use a redirect on their homepage. This infuriating level of non-  
 25 support is indicative of Google’s attitude toward any company whom Google has not

26 \_\_\_\_\_  
 27 <sup>20</sup> Google’s published policy is to reduce a page’s search rank by 15% if the page is  
 28 redirected. *See, e.g.*, Google’s video FAQ response entitled “What percentage of PageRank  
 is lost through a 301 redirect?” (available at <https://www.youtube.com/watch?v=Filv4pP-1nw>, last visited Sep. 26, 2018).

1 selected as a partner.

2 63. Since early 2016, Dreamstime has followed every guideline and suggestion  
3 provided by Google's documentation and/or the industry's best practices in an effort to  
4 resolve the damage to its organic search ranking. Through these explanations, Google has  
5 over several years directed Dreamstime and other members of the public to particular  
6 policies and guidelines contained in various blog posts and other statements of policy,  
7 knowing at the time that these "fixes" would not resolve the types of issues that Dreamstime  
8 was experiencing due to Google's anticompetitive conduct. Dreamstime followed these  
9 suggestions and guidelines, but Dreamstime's ranking continued to decline through the end  
10 of 2017.<sup>21</sup> Relying on Google's suggestions, Dreamstime has implemented a bevy of  
11 changes, including: switching to https<sup>22</sup> and http2;<sup>23</sup> disavowing links;<sup>24</sup> improving its  
12 website quality, diversity, and quantity of content; investing in dedicated hardware for a  
13 caching system; and dramatically increasing its crawl rate (10 times) and number of  
14 pages. In each instance, and in a pattern occurring over years, Google's publications  
15 pointed Dreamstime and other members of the public to "fixes" that it knew would not work  
16 in cases such as Dreamstime's, intending that they rely upon these statements by continuing  
17 to spend on ad campaigns to make up the difference in search ranking and expending other  
18 resources in a futile attempt to fix problems that were actually the result of Google's  
19 anticompetitive conduct. In reliance upon Google's suggestions and publications,<sup>25</sup>  
20 Dreamstime invested significant development hours in rebuilding its entire site to be

21 \_\_\_\_\_  
22 <sup>21</sup> It is interesting to note that Dreamstime's position in Google searches for "stock photos"  
23 improved slightly a few days following service of its original Complaint in this action,  
24 suggesting that Google momentarily took its thumb off of the scale after being sued. This  
25 improvement, however, has not put Dreamstime back to its prior place on the first page of  
26 search results.

27 <sup>22</sup> See, <https://webmasters.googleblog.com/2014/08/https-as-ranking-signal.html> (last visited  
28 Sep. 26, 2018).

<sup>23</sup> See, <https://developers.google.com/web/fundamentals/performance/http2/> (last visited  
Sep. 26, 2018).

<sup>24</sup> See, <https://support.google.com/webmasters/answer/2648487?hl=en> (last visited Sep. 26,  
2018).

<sup>25</sup> See, <https://webmasters.googleblog.com/2018/03/rolling-out-mobile-first-indexing.html>  
(last visited Sep. 26, 2018).

1 “mobile friendly,” because Google claimed that Dreamstime’s search rank might be hurt by  
2 failing to have a site that worked on cell phones. Dreamstime diverted precious  
3 development resources from other projects in its business plan and doubled its hosting costs,  
4 all to no avail. Now it is clear that these “suggestions” were cover for Google’s  
5 anticompetitive search bias scheme. These suggestions could not possibly alter  
6 Dreamstime’s ranking and disguised Google’s intentional manipulation of Dreamstime’s  
7 ranking algorithm. Dreamstime justifiably and detrimentally relied on Google’s suggestions  
8 and publications when it expended significant resources to implement these suggestions and  
9 undertook an entire re-design of its website in an ultimately futile attempt to regain the  
10 ground it lost in Google’s organic search.

11 64. In further reliance upon Google’s publications indicating that Dreamstime’s  
12 ranking was a function of some aspect of its website’s content, Dreamstime paid several  
13 expensive search engine “guru” firms for their analysis of Dreamstime’s Google search  
14 ranking decline, and none were able to identify any “smoking gun” with Dreamstime’s site  
15 that would explain its drop in Google’s search ranking. Relying on Google’s public  
16 guidelines about how its search worked, which Google knew were false (at least as applied  
17 to Dreamstime’s website), Dreamstime spent millions of dollars on website hosting to  
18 increase the speed of its website and facilitate Google’s indexing bots. These efforts failed  
19 to regain its lost ranking. In addition, Dreamstime tasked its own in-house SEO expert with  
20 engaging outside search engine gurus to regain its prior search ranking. Each firm was  
21 unable to identify any issues with Dreamstime’s site that would explain how it came to be  
22 excluded from Google’s search rankings for keywords most relevant to stock photography.  
23 Dreamstime also launched a second website, Megapixl.com, to get more exposure for a  
24 subset of its content (as Shutterstock did with Bigstockphoto.com and Offset.com).  
25 Dreamstime also spent substantial sums on AdWords campaigns for Megapixl.com.  
26 Despite Dreamstime’s significant investment in infrastructure and advertising for  
27 Megapixl.com, that website was unable to gain traction in organic search and Dreamstime  
28 was only able to recover a fraction of its investment. All told, Dreamstime spent several

1 million dollars hiring search professionals, building out and launching AdWords campaigns  
2 for a second website, expanding the content on its primary site and increasing its AdWords  
3 budget, to no avail.

4 65. As a direct result of the losses resulting from its effective exclusion from  
5 Google's organic search results, and in reliance upon Google's dishonest explanations for its  
6 ranking drop, Dreamstime spent considerably more on search engine advertising to maintain  
7 its market position.<sup>26</sup> This meant significantly increased spending on Google's AdWords,  
8 which diminished Dreamstime's competitive standing. Of course, it also benefitted Google  
9 and its partners directly.

10 **3. Google Also Rigged the Bidding Process in its AdWords Program**  
11 **to Enhance its Monopoly Power in Online Search Advertising**

12 **a. Dreamstime Has Entered into a Contract with Google as a**  
13 **Direct Purchaser of Google's AdWords Service**

14 66. Google generates a significant amount of its revenue from AdWords, its  
15 advertising service through which companies pay Google to have advertisements for their  
16 websites prominently displayed in Google's search results.

17 67. To use AdWords, advertisers must agree to the Google LLC Advertising  
18 Program Terms and several related policies and procedures (the "AdWords Agreement").  
19 (See Exhibit "F.") The related policies and procedures, which are extremely voluminous,  
20 are expressly incorporated into the AdWords Agreement. Essentially, the AdWords  
21 Agreement provides that, in consideration for Google displaying a customer's ad, the  
22 customer will pay Google at a price determined by Google's AdWords auction program,  
23 subject to important limitations. The agreement states that use is subject to applicable  
24 Google advertising polices.

25 68. Google drafted both the AdWords Agreement and the advertising polices  
26 \_\_\_\_\_

27 <sup>26</sup> After dramatically increasing its ad spend and implementing extensive changes  
28 recommended by Google to help with search ranking, Dreamstime recently resolved to  
significantly lower its advertising spending, as increased spending did not come close to  
compensating for the loss of traffic caused by Google's search bias.

1 incorporated into it. The agreements are adhesion contracts, as Google offers its services on  
 2 a “take it or leave it” basis without giving consumers opportunities to negotiate terms to  
 3 benefit their needs or interests.

4 69. Section 1 of the AdWords Agreement provides that “Google and its affiliates  
 5 or Partners may reject or remove a specific Target, Ad, or Destination at any time for any or  
 6 no reason . . . [and] Google or its affiliates may participate in Program auctions in support of  
 7 its own services and products.”

8 70. An update to the AdWords Agreement in late 2017 included an arbitration  
 9 clause with an opt out option, and Dreamstime opted out of this clause.

10 71. In return for the obligations and other consideration to which advertisers  
 11 agreed in the AdWords Agreement, Google agreed to provide the AdWords program to each  
 12 and every purchaser executing the standard AdWords Agreement. This program was and is  
 13 described in various answers to Frequently Asked Questions (“FAQs”) in Google’s  
 14 AdWords support pages, which were incorporated by reference into the AdWords  
 15 Agreement. Attached as Exhibit “G” is the AdWords agreement in effect around the time  
 16 Dreamstime became an AdWords purchaser that specifically referenced and incorporated  
 17 the FAQs. The AdWords program uses an auction system to determine which  
 18 advertisements are shown and how much an advertisement costs. Advertisers bid for  
 19 relevant keywords such as “stock photos.” AdWords then assigns each advertisement a  
 20 “quality score” based on multiple factors including click-through rate (“CTR”) (the  
 21 percentage of users who view the ad that actually click it), relevance to the keywords, and  
 22 the quality of the advertiser’s website. Each time a Google user enters search terms that  
 23 include relevant keywords, AdWords determines which of the competing advertisements are  
 24 displayed by factoring both an advertiser’s bid amount and quality score. Thus, the lower  
 25 the advertisement’s quality score, the higher the bid must be for the ad to compete.

26 72. Advertisers place bids on the “cost per click” of each advertisement.  
 27 Advertisers can choose to either manually bid or pay an extra fee to select from automatic  
 28 bidding options that use algorithms to adjust and optimize bid amounts based on specific



1 advertising goals. Google refers to automatic bidding options as “marketing campaigns.”  
2 Common marketing campaigns include targeting spending on advertisements with the  
3 lowest cost per acquisition or on advertisements that maximize the number of clicks  
4 generated.

5 73. When using marketing campaigns, advertisers specify the amount, on average,  
6 they would like to spend each day on a particular campaign. Google then aims to show  
7 advertisements as much as possible until the daily budget is met. Customers can also elect  
8 to use Google’s cost-per-acquisition (“CPA”) method, which is intended to use machine  
9 learning to generate bids that result in a targeted average cost for each acquisition they  
10 obtain through the campaign. For a specific advertiser, acquisitions might include customer  
11 visits resulting in sales, signups, or mobile app downloads.

12 74. In 2004, Dreamtime entered the AdWords Agreement with Google when it  
13 began paying Google to display its advertisements on Google’s search results. Implicit in  
14 this Agreement was Google’s duty to provide its advertising services to Dreamtime in good  
15 faith and not take actions that unfairly favored Dreamtime’s competitors. In particular, to  
16 the extent that Google exercised its absolute discretion to remove ads “at any time for any  
17 reason or no reason” under the AdWords Agreement, it must do so in good faith.  
18 Otherwise, the AdWords Agreement becomes illusory because it makes Google’s  
19 performance completely optional. The only consideration Google provides pursuant to the  
20 agreement is to display ads at the cost-per-click determined (or the alternative cost-per-  
21 acquisition) through advertiser auctions. If Google is free to remove Dreamtime’s ads for  
22 any or no reason, this renders the AdWords Agreement illusory.

23 75. Dreamtime’s decision to enter into the AdWords Agreement and its good  
24 faith understanding of the terms of Google’s AdWords Agreement and advertising policies  
25 were always based on the text of those agreements, Google’s stated policies and the  
26 understanding that Google would apply its policies evenly toward participants who bid for  
27 the same keywords and treat them all fairly.

28 76. Dreamtime has engaged in several different marketing campaigns with the



1 goal of promoting its advertisements with the lowest cost per acquisition. That is, to  
 2 promote its advertisements with the best combination of quality score, bid amount, and  
 3 resulting customer acquisitions. In doing so, Dreamstime as a customer pays Google daily  
 4 to determine which of its advertisements are the most effective and to increase their  
 5 circulation accordingly.

6 **b. Google Removed or Canceled Dreamstime’s Online Ads in**  
 7 **Bad Faith and Fraudulently Concealed and Omitted Facts to**  
 8 **Overcharge Dreamstime**

9 77. Despite Google’s agreement to provide Dreamstime with effective marketing  
 10 campaigns pursuant to policies that were uniformly agreed to and intended to apply  
 11 uniformly to all purchasers who executed the standard AdWords Agreement, several of  
 12 Dreamstime’s campaigns have suddenly stopped acquiring customers for no  
 13 apparent reason. In other words, Dreamstime was seeing a steady, predictable number  
 14 of acquisitions from these campaigns each week, and then suddenly these acquisitions  
 15 dropped to zero and remained at zero without any decline in the number of viewer  
 16 impressions. Dreamstime has been unable to receive any support from Google on this issue,  
 17 despite multiple requests for an explanation. Each time Dreamstime sought an explanation  
 18 from Google as to why these campaigns stopped working, Google gave knowingly false  
 19 explanations and intentionally omitted that it was rigging the AdWords bidding process to  
 20 cause Dreamstime to overspend on AdWords.

21 78. For example, in September of 2017, when Elena Dobra of Dreamstime  
 22 emailed her support contact at Google, Kyril Boltenko, to inquire why a previously  
 23 successful ad campaign had recently stopped delivering customers to Dreamstime without  
 24 any change from Dreamstime to the campaign, Mr. Botenko forwarded a response from an  
 25 unnamed member of Google’s technical team, stating that “traffic fluctuation had been  
 26 caused by relatively long conversion delay,” and that the system “was working as intended.”  
 27 This explanation was untrue, and Google knew it at the time, intending that Dreamstime rely  
 28 upon it (as it did) by continuing to spend resources on unsuccessful campaigns. The

1 explanation, as many others, intentionally omitted that Google was purposefully  
 2 manipulating the campaign and not delivering targeted CPA as promised in order to cause  
 3 Dreamstime to overspend on advertising.

4 79. In addition, Google has cancelled certain Dreamstime ad campaigns on the  
 5 basis that they violated stated policies that Google knew the ad campaigns did not violate.  
 6 Google's advertising policies understandably prohibit the use of misleading content in  
 7 advertisements, and the standard AdWords Agreement is intended to ensure that these  
 8 policies apply equally to all purchasers of AdWords. The policies provide a specific list of  
 9 prohibited conduct that would subject an advertisement to rejection or removal, including:  
 10 "making false statements about your identity or qualifications; using false claims or claims  
 11 that entice the user with an improbable result; falsely implying affiliation with, or  
 12 endorsement by, an individual, organization, product, or service; ads that mislead or trick  
 13 the user into interacting with them ('trick to click'); or providing a business name that is  
 14 anything other than the domain."

15 80. Google has consistently and wrongfully removed Dreamstime's lowest cost  
 16 per acquisition advertisements as being "trick to click" despite Dreamstime's competitors  
 17 running the exact same type of advertisements, without any apparent issue or objection from  
 18 Google.<sup>27</sup> Google's purported complaint with these ads concerned the "search box" that  
 19 invited users to search Dreamstime's website. When a user clicked on this search box, the  
 20 user was taken to Dreamstime's website (as opposed to search results appearing in the actual  
 21 box). Google's technical staff has given inconsistent and knowingly false explanations to  
 22 Dreamstime about why certain ads were "trick to click." In a Google hangouts  
 23 conversation, a Google staff member told Dreamstime that Dreamstime's swirl logo with a  
 24 white background was "trick to click." Dreamstime's contact at Google apologized when  
 25 passing along this statement to Dreamstime.

26 \_\_\_\_\_  
 27 <sup>27</sup> See Exhibit "H" attached hereto, which provides a snapshot of advertisements currently  
 28 running on Google's DisplayAds platform for one of Dreamstime's competitors that have  
 the same purported "trick to click" characteristics that Google rejected in Dreamstime's ads,  
*i.e.* "fake" search boxes.

1           81. Even more telling is the fact that Google continued to remove Dreamtime's  
2 low cost per acquisition advertisements, falsely labeling them as "trick to click," while  
3 allowing Dreamtime's high costs per acquisition display advertisements of the same type to  
4 remain active. When an advertisement's cost per acquisition began to drop, it was removed  
5 as being "trick to click" despite the fact that other Dreamtime advertisements with the exact  
6 same format, but with higher cost per acquisition, were left running.

7           82. Dreamtime engaged in extensive efforts to resolve these issues with Google  
8 and spent countless hours emailing and calling Google to find out: why its low cost per  
9 acquisition advertisements were being removed, how it could modify them so that they  
10 would follow Google's advertising policies, and why competitor sites could display  
11 advertisements with the same format but without repercussion. Dreamtime also asked  
12 Google to reconsider its decision to remove its advertisements. In response to Dreamtime's  
13 inquiries, Google fraudulently concealed the true reason for their exclusion.

14           83. For example, Elena Dobre of Dreamtime emailed her contact with Google's  
15 DisplayAds team, Andreea Simulescu, on April 10, 2017, to inquire about why a batch of  
16 Dreamtime's HTML5 banner ads that were performing well had suddenly been disabled as  
17 "trick to click," despite following Google's specific instructions for creating such ads. At  
18 the same time, Dreamtime's other HTML5 banner ads, having the same dynamic search  
19 box input, which ads were generating a higher fee for Google, were not disabled. On April  
20 11, 2017, Ms. Simulescu replied that "[s]ometimes there can be certain discrepancies that  
21 occur in the approvals due to the complexity of our system." Google knew this explanation  
22 to be false (as it was) as applied to the Dreamtime ad in question at the time it gave it, and  
23 it intentionally omitted the fact that lower cost ad was removed merely for arbitrary and  
24 anticompetitive reasons to induce Dreamtime's reliance in the form of overspending on  
25 advertising. In reality, the "discrepancy" described by Ms. Simulescu was not due to the  
26 complexity of Google's system but its deceptive scheme to overcharge Dreamtime for ads  
27 and at the same time interfere with Dreamtime's acquisition of new customers.  
28 Dreamtime reasonably relied upon these misrepresentations and omissions by continuing to

1 overspend on ads.

2       84. Justifiably and reasonably relying on Google's suggestions, Dreamtime  
3 implemented HTML5 versions of its search bar ads, which added an actual dynamic search  
4 input field to the advertisement and thereby removed any likelihood that the consumer  
5 might be "tricked" into clicking a search field that was not active. This dynamic search box  
6 could be used by users as if they were searching directly on Dreamtime's website. For  
7 example, typing "trees" in the field and pressing the banner's Search button would open a  
8 page of "trees" search results on Dreamtime's website. For several months, Google  
9 allowed these ads to run even though the search function was not working properly because  
10 of a technical problem with Google's system. Google then began removing the ads again in  
11 the same fashion as the non-dynamic versions. Per Google's new specifications,  
12 Dreamtime resubmitted the banners with a search box that did not work.

13       85. As of March 2018, Dreamtime's banners include a search box that does not  
14 work, which behave exactly as the non-dynamic banners initially removed, despite Google's  
15 initial assurance that Dreamtime's HTML5 efforts would result in workable, dynamic  
16 search ads. Later, Google updated its ad validation tool to disallow ads with dynamic search  
17 boxes from being accepted into Google's ad system. Thereafter, Dreamtime was only  
18 allowed to upload ad banners without a dynamic search box feature.

19       86. In sum, Google wields its immense power in the online search engine  
20 advertising market discriminatorily by allowing only some of its AdWords customers to use  
21 effective, low cost advertisements, and by cancelling similar advertisements of other  
22 customers. Google uses selective enforcement of its removal policies as one of its bases for  
23 discriminating and to attempt to conceal its competitively unfair behavior. By doing so,  
24 Google ensures that disfavored customers, like Dreamtime, pay more to Google for  
25 displaying less effective advertisements. This provides a huge monopoly windfall for  
26 Google at Dreamtime's expense, while simultaneously benefitting Google and its partners  
27 such as Shutterstock and Getty Images.

28       87. In addition to being a breach of contract and/or a breach of the implied

1 covenant of good faith and fair dealing, Google's unfair enforcement of its advertising  
 2 polices has resulted in diminution of Dreamstime's competitive position among online stock  
 3 photography repositories. Dreamstime cannot compete at the level that rival sites compete  
 4 while Google continues to unfairly discriminate against its low cost per acquisition  
 5 advertisements. Dreamstime justifiably relief upon Google's intentional misrepresentations  
 6 and omissions noted above by continuing to spend on AdWords. But for these  
 7 misrepresentations, Dreamstime would not have invested in AdWords to the extent that it  
 8 did.

9 **c. Google Overdelivered Advertising to Dreamstime and**  
 10 **Systematically Exceeded Targeted CPA Deliveries**

11 88. Google also consistently and systematically overdelivered advertising, causing  
 12 campaigns to exceed Dreamstime's budgeted amounts. One stark example of this was in  
 13 relation to the alternative CPA bidding format. In CPA bidding, bidders set a Target CPA,  
 14 which Google described as the cost-per-acquisition that a customer should expect to pay to  
 15 get as many conversions as possible within a CPA goal set by the customer. As explained in  
 16 the Help Center of Google Ads ([support.google.com/google-ads/answer/6268632?hl=en](https://support.google.com/google-ads/answer/6268632?hl=en)):  
 17 "Target CPA is a Google Ads Smart Bidding strategy that sets bids to help get as many  
 18 conversions as possible at the target cost-per-acquisition (CPA) you set. It uses advanced  
 19 machine learning to automatically optimize bids and offers auction-time bidding capabilities  
 20 that tailor bids for each and every auction."

21 89. Attached as Exhibit "N" is a collection of campaigns in which Dreamstime set  
 22 a target CPA. The average CPA for these campaigns was exceeded significantly and  
 23 systematically by large amounts (and sometimes by factors of three).

24 90. In November 2016, while relying on Google's Target CPA system, rather  
 25 than its daily spending limits system (which, as alleged below, also frequently overcharges  
 26 Dreamstime) as a means for budgeting for online advertising, Dreamstime noticed that the  
 27 amount Google was charging for a particular ad campaign suddenly spiked from \$400 per  
 28 day to over \$2,400 per day. When Dreamstime investigated, it found that despite having a

Target CPA set for the campaign at no more than \$240, Google had favored ads that generated only 17 conversions at a total cost of \$16,000 – *i.e.*, CPA of \$951 – over other ads that had generated 7 conversions at a total cost of \$691 – *i.e.*, CPA of \$99. When Dreamstime’s Elena Dobra emailed her support contacts at Google, Carmen Punga and Ana Sipciu, to inquire about this apparent overcharging for Dreamstime’s campaign, Ms. Sipciu responded in an email on December 12, 2017 only that the campaign had behaved technically as it was supposed to, according to Google’s internal algorithm. Google knew this explanation was false when given, and intended that Dreamstime rely upon it (which it did) by overspending on CPA ad campaigns.

91. In addition to ignoring Dreamstime’s Target CPA settings for its ad campaigns, Google drastically exceeds the daily budgeted limits that Dreamstime sets for its campaigns. Though Google now claims that its current policy allows it to drastically exceed the daily budgets set by bidders as long as the monthly budget (30.4 times the daily budget) is not exceeded, this was not always the case. In fact, earlier policies in effect for many years (and until October of 2017) would not allow the daily budget to be exceeded, even by a small amount on a given day, without providing a refund or credit on Dreamstime’s next invoice with the description “overdelivery” – a term coined by Google itself.<sup>28</sup> Google has made changes to this policy that allow it to systematically exceed in extreme ways the daily budget set by Dreamstime for certain campaigns, without adequate notice to Dreamstime. Google exceeded its then-current overdelivery policies with respect to daily limits and/or changed its policy and extremely exceeded daily budgets without having given fair and adequate notice of any change in policy to Dreamstime. This conduct is either a breach of contract or a breach of the implied covenant of good faith and fair dealing. It is also

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<sup>28</sup> Until October 2017, Google allowed a 20% overdelivery over the daily budget on a given day, refunding anything spent over the daily budget. After October 2017, Google allowed 100% of the daily budget in overdelivery, without refund (unless the overdelivery exceeded the monthly budget). Companies are directed by Google to set a daily budget, not a monthly one. Google uses this change in policy to deliver irrelevant or much less relevant traffic that does not add conversions at any reasonable rate. Thus, the practice is deceptive and results in AdWords customers overpaying for AdWords.



1 anticompetitive.

2 **4. Google Also Removed and Manipulated the Visibility of**  
 3 **Dreamstime's Mobile App in Google's App Store**

4 92. Since around the middle of 2015, Dreamstime has provided several mobile  
 5 applications ("apps") for its users to access and utilize various features of its service on  
 6 mobile devices. Two of Dreamstime's apps have been designed specifically for use on  
 7 Google's Android mobile operating system and, accordingly, have been offered for  
 8 download in the Google Play app store (<https://play.google.com>). The first Android app  
 9 entitled "Stock Photos by Dreamstime" (the "Buyer App") is specifically designed for users  
 10 who would like to search for and purchase licenses for images in Dreamstime's library. The  
 11 second Android app entitled "Dreamstime: Sell Your Photos" (the "Seller App") is designed  
 12 for users who would like to upload their photos for inclusion in Dreamstime's library.

13 93. Shortly after Dreamstime's Buyer App appeared for the first time in the  
 14 Google Play app store, Google removed the Buyer App, claiming that lingerie photographs  
 15 visible in the Buyer App were "adult" content that was prohibited by the app store's  
 16 policies. Attached as Exhibit "Q" are examples of the purportedly offending images, none  
 17 of which contain adult content. Google's claim was strange, given the fact that  
 18 Shutterstock's app remained active in the Google Play app store despite featuring explicit  
 19 nude photographs. While the images from Shutterstock's app are particularly "not safe for  
 20 work" and therefore not attached as exhibits, Dreamstime can provide at the appropriate  
 21 time a comparison of the images Google found objectionable on Dreamstime's Buyer App  
 22 and images from Shutterstock's app that demonstrate Google's double standard. When  
 23 Dreamstime inquired about this discrepancy in treatment, Google stated that its review was  
 24 limited to Dreamstime's Buyer App and that if Dreamstime wanted to address the issue, it  
 25 should lodge a formal complaint concerning Shutterstock's app. Following Google's  
 26 instruction, Dreamstime lodged a complaint concerning Shutterstock's app only to have it  
 27 summarily ignored.

28 94. More recently, in July of 2018, despite Dreamstime's Buyer App having



1 favorable user reviews and being installed on more than 50,000 Android mobile devices,  
2 Google – without any reasonable justification – completely removed Dreamstime’s Buyer  
3 App from search results in the app store for the keyword “stock photos,” the most important  
4 search term for the app, even though it was not removed from other searches (indicating a  
5 manual, intentional de-indexing by Google). In doing so, Google has removed yet another  
6 avenue for new customers looking for stock photos on their mobile device to find  
7 Dreamstime.

8         95. On September 5, 2018, Elena Dobre of Dreamstime emailed Carmen Punga  
9 and Andreea Simulescu of Google’s support to ask why Dreamstime’s Buyer App had been  
10 de-indexed in the Google Play app store for its most significant industry search term. After  
11 receiving no response for five days, Ms. Dobre emailed Punga and Simulescu again on  
12 September 10th and was instructed by Ms. Simulescu to resubmit Dreamstime’s inquiry  
13 using a Google Play app store support page that Google knew did not actually accept user  
14 submissions. After independently searching and finding another support page that did  
15 accept user submissions concerning issues with app publishing, Ms. Dobre received a  
16 response from a Google employee identified only as “Travis” using the generic email  
17 address googleplay-developer-support@google.com on September 18th asking for more  
18 time to investigate, since a “policy question” had been raised concerning Dreamstime’s  
19 Buyer App. Finally, on September 20th, Ms. Dobre received a second email from the email  
20 address googleplay-developer-support@google.com, signed by an individual identified only  
21 as “Jay,” that did not reference any policy question but instead provided generic information  
22 on factors that Google may consider in determining an app’s position in search results on  
23 the Google Play app store. Google’s September 20th response completely ignored the fact  
24 that the search results position of Dreamstime’s Buyer App could never be improved since it  
25 has been entirely removed from search results for “stock photos.” Google’s responses also,  
26 of course, intentionally omitted the fact that none of the “fixes” or explanations posed by  
27 Google applied in this case, because Google was simply intentionally de-indexing the app  
28 for anticompetitive purposes. All of Google’s representations and omissions regarding the

1 Buyer App were made with knowledge of their falsity and with intent to induce Dreamstime  
2 to rely upon them, which Dreamstime justifiably did when it invested significant resources  
3 into the Buyer App.

4 **5. Google Uses Google Images to Help Customers Bypass**  
5 **Dreamstime’s Site and Access Its Photos Directly Without Paying**  
6 **for Them**

7 96. Google unlawfully uses Google Images to disrupt the market for stock photos  
8 and eliminate (or at least significantly impair) competition in that line of commerce to  
9 benefit its online search advertising monopoly. One way that Google caused  
10 anticompetitive effects in the online stock photography business until very recently was by  
11 way of its “view image” button that appeared when a user clicked on an image returned by a  
12 Google search. This button allowed a user to open and save the image directly. The view  
13 image button encouraged and enabled users to steal copyrighted photographs from  
14 photographers, publishers and stock photography companies like Dreamstime. The button  
15 allowed users to bypass the websites from which Google obtained the image and provided  
16 the image directly to the user. To make matters worse, Google provided users with high  
17 resolution<sup>29</sup> copies of these images, which made it even easier for users to download and  
18 save images without visiting their website of origin. The “view image” button took business  
19 away from Dreamstime and other stock photography sites, as users often took images  
20 without ever visiting its site or paying for them.

21 97. On February 15, 2018, it was reported that Google was removing its “view  
22 image” button to encourage users to visit the website that hosts the image.<sup>30</sup> Just one week  
23

24  
25 <sup>29</sup> It is significant to note that Google Images grants a higher ranking to images with the  
26 highest resolution. In search results, Google Images actually displays and facilitates  
27 download of images that have a higher resolution than can even be displayed on the user’s  
28 device where the search was performed. This feature of Google Images is only useful if  
Google intends for users to retain and reuse the images from search results, without regard  
to whether the images can be used without permission from their copyright owners.

<sup>30</sup> See, <https://www.theverge.com/2018/2/15/17017864/google-removes-view-image-button-from-search-results>. (last accessed on March 19, 2018).

1 after Google removed this button, Dreamstime experienced a 25% increase in user traffic to  
 2 its website and 10% increase in paid conversions – proving that Google’s past conduct with  
 3 the “view image” button stole traffic and customers from Dreamstime. Despite removing  
 4 this button, to this day searchers are still able to access high-resolution images that show up  
 5 in Google Images searches by right-clicking and saving the image.<sup>31</sup>

6 **D. Google’s Monopolistic Scheme Causes Antitrust Injury to Dreamstime**  
 7 **(and Others) and Simultaneously Harms Competition and Consumers in**  
 8 **the Online Search Advertising Market**

9 98. Google’s evisceration of Dreamstime’s organic search ranking and selective  
 10 enforcement of its AdWords policies worked independently and in concert to bolster  
 11 Google’s online search advertising monopoly, by increasing Google Images’ and Google’s  
 12 stock photo partners’ dominance and harming Dreamstime in the process. Other online  
 13 stock photo providers, such as 123RF, DepositPhotos, and CanStockPhoto, have been  
 14 similarly injured. These stock photography websites cannot compete fairly with  
 15 Shutterstock and Getty Images without being accurately and legitimately ranked by  
 16 Google’s search engine and without having a fair opportunity to compete on a level playing  
 17 field with them for AdWords. Google’s intent was to increase reliance on Google Images  
 18 and corner the market on a critical supply of stock photos vis-à-vis Yahoo! and Bing, and its  
 19 conduct had this effect in Google’s market. It also, simultaneously, harmed Dreamstime  
 20 and competition among its rivals.

21 99. The result of Google’s abuse and exploitation of its online search advertising  
 22 monopoly by means of anticompetitive and discriminatory conduct is that competition  
 23 among online search advertisers is harmed at the same time that competition among online  
 24 stock photography websites has been harmed. Essentially, Google has cornered the market  
 25 on image-based searches *and* stock photo supply for search-based display ads. This all  
 26

27  
 28 <sup>31</sup> Google has taken its empowerment of would-be infringers even further, by creating and  
 distributing a script that removes watermarks from images (watermarks are one means by  
 which a copyright owner prevents unauthorized use of an image).

1 plays out *within Google's online search advertising market*, as all of the affected stock  
 2 photo websites participate in that market as direct purchasers of, and competing bidders for,  
 3 the same AdWords. Google's acts have threatened to drive many competitors out of this  
 4 business and created technological market barriers to entry which keep out potential new  
 5 entrants. Moreover, they have generated confusion in the online search marketplace by  
 6 creating online search and search ad results with fewer choices for consumers, diminished  
 7 pricing competition and reduced innovation.

8 100. These injuries are not limited to the stock photography business – rather, they  
 9 are felt in Google's primary market, as Bing and Yahoo! lose market share to Google by  
 10 virtue of its more dominant search advertising services. These injuries are inextricably  
 11 intertwined with Google's maintenance of its monopoly in the online search advertising  
 12 market and with the harms to competition and consumer welfare *in the online search*  
 13 *advertising market*. As detailed below, Google's exclusion of Dreamstime and other  
 14 similarly-situated online stock photography competitors/customers from its online search  
 15 advertising market enhances Google's monopoly in that market in three important ways: (1)  
 16 it drives more web traffic to Google and Google Images, which increases Google's search  
 17 dominance; (2) it enhances the value of its strategic partnerships with Shutterstock and  
 18 Getty Images (through which Google now offers stock photos to its own search advertising  
 19 customers); and (3) in the meantime, it increases Google's revenue through the increased  
 20 AdWords revenue it derives from excluded websites.

21 **1. Google's Elimination of a Competitive Threat to Google Images**  
 22 **Protects and Enhances Its Monopoly, Harms Competition and**  
 23 **Reduces Consumer Choice and Welfare in the Market**

24 101. Google's exclusionary conduct toward Dreamstime enhances its own  
 25 monopoly by sending more web traffic to Google Images and ensuring that certain  
 26 consumers searching for licensed images to purchase online do not go directly to  
 27 Dreamstime to search for and browse images. Google Images is an unnecessary middleman  
 28 for those who want to search directly for licensed images to purchase. Dreamstime's site

functions in the same way as Google Images, and is more efficient for this subclass of search consumers. Dreamstime also offers over two million free images, making it attractive to an even larger class of image searchers than those looking to purchase images. Image searches are one of the most common subcategories of search, as reflected in Google's prominent "Images" tab in its search results. The exclusion of Dreamstime from the most common search results related to stock photography increases consumers' reliance on Google Images and drives more web traffic through Google, which it monetizes through advertising.

102. Competition in online search advertising is harmed by Google's promotion of Google Images over Dreamstime and others. Google's competitors, such as Bing and Yahoo!, offer competing search and image services. However, they have been unable to achieve the volume of traffic and associated historical data capable of allowing their image-based services to compete with Google Images. Google's elimination of Dreamstime and other stock photography websites enhances and entrenches Google Images' dominance and secures its competitive advantages over Bing and Yahoo!.

## 2. Google's Favoritism of Its Stock Photo Partners Enhances Its Monopoly, Harms Competition and Reduces Consumer Welfare in Online Search Advertising

103. Google's strategic partnerships with and favoritism of Shutterstock and Getty Images enhance its online search advertising monopoly in multiple ways. Stock photography repositories supply a critical input for Google's and its chief rivals' online search advertising networks – stock photos that can be integrated into search-based display ads. Google and its chief rivals compete for this critical supply of licensed images. Google's partnerships and licensing agreements give it access to hundreds of millions of licensed images to integrate into its ad network,<sup>32</sup> whereby Google has instantly become one

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<sup>32</sup> The Shutterstock and Getty Images contracts are also opportunities for Google to collect more user data and play into the self-reinforcing strength of Google's search advertising platform as it gathers more data compared to rivals. Its control over user data creates enormous barriers to entry and unique competitive advantages for Google that increase its

1 of the largest suppliers of stock photos to consumers intending to use them in online search  
 2 ads. These partnerships also reduce Shutterstock and Getty Images' incentives to compete  
 3 directly with Google Images for imaged-based search traffic, drastically reducing any threat  
 4 they would otherwise pose to Google Images.

5 104. These strategic alliances – and Google's favoritism of its partners – harm  
 6 competition in the online search advertising market because Yahoo! and Bing are unable to  
 7 obtain the same access to licensed stock photos for their competing ad networks. By  
 8 consolidating control of the stock photography industry among its strategic partners, Google  
 9 has neutralized and/or suppressed competition and has enhanced its competitive advantage  
 10 over Bing and Yahoo!. Ultimately, Google's search consumers (who are also potential  
 11 consumers of Dreamstime) are harmed because Dreamstime, as a large supplier of unique,  
 12 high-quality stock photo images – one that otherwise would exert downward pricing  
 13 pressure on a dominant market player like Shutterstock or Getty Images – has essentially  
 14 become invisible to Google's search consumers. A non-discriminatory application of  
 15 Google's search algorithm would foster healthy and fair competition among these websites  
 16 for key words crucial to their industry.

### 17 **3. Google's Exclusionary Conduct Allows It to Drive Up Prices and** 18 **Restrict Output for Dreamstime's and Google's Own Online** 19 **Customers**

20 105. Google's market power in the online search advertising market has allowed it  
 21 to extract supracompetitive advertising premiums from its customers because it is not  
 22 required to compete on price. Websites that are pushed to the bottom of the search rankings,  
 23 as Dreamstime has been, are forced to increase their reliance (and spending) on Google  
 24 advertising services to acquire customers. Since its inception, Dreamstime has spent  
 25

26 monopoly power with every partnership it enters. In fact, multiple countries have accused  
 27 Google of (and sanctioned it for) unlawful mining of user data through various platforms  
 28 and arrangements, including but not limited to Google Maps, Android phones, and alliances  
 with other partners. *See*, Newman, Nathan, "Search, Antitrust, And the Economics Of The  
 Control Of User Data" (31 Yale J. on Reg. 401, 435-440).



1 approximately \$50 million on its AdWords campaigns, and spends hundreds of thousands of  
 2 dollars on AdWords per month. When Dreamstime began to experience a drop in its  
 3 organic search traffic caused by Google's manipulation of its search ranking, it increased its  
 4 monthly AdWords budget by approximately 50% in an attempt to mitigate the damage  
 5 caused by the changes to Google's algorithm and in justifiably reliance upon the intentional  
 6 misrepresentations and omissions detailed above. Despite increasing its advertising budget,  
 7 as a direct result of Google's manipulation of Dreamstime's search ranking and its unfair  
 8 enforcement of its AdWords policies, Dreamstime has lost millions of dollars, its cost of  
 9 acquiring new customers has doubled, and its growth has slowed by approximately 50%.  
 10 To survive, Dreamstime will have to pass these costs along to its customers, many of whom  
 11 are also Google's search customers.

12 106. The supply of stock photos available to consumers who perform image-related  
 13 searches in the relevant market is also restricted by Google's conduct. Before Google's  
 14 discrimination against Dreamstime and other stock photography websites, consumers  
 15 googling for licensed images had more choice. That is, when Dreamstime was ranked in the  
 16 top three of search results for online stock photography, users searching for online stock  
 17 photography had easy, direct access to the 72 million stock photos (and over two million  
 18 free photos) on Dreamstime's website. By removing Dreamstime and most other significant  
 19 stock photo websites, Google has left consumers with only two websites specializing in  
 20 stock photography out of an industry populated with a number of other players and valued  
 21 in the billions.

## 22 **V. CLAIMS FOR RELIEF**

### 23 **FIRST CAUSE OF ACTION**

#### 24 **(Monopoly Maintenance and Abuse in Violation of** 25 **Section Two of the Sherman Act)**

26 107. Dreamstime realleges the preceding paragraphs of this First Amended  
 27 Complaint as if fully set forth herein.

28 108. **Section 2 of the Sherman Act.** The actions complained of herein will

1 continue to restrain trade, allow Google to maintain, exploit, and abuse its online search  
2 advertising monopoly power, and adversely affect interstate commerce in that Google  
3 provides and sells its services across State lines and on the Internet. Defendant Google and  
4 plaintiff Dreamstime also each purchase goods and supplies in interstate commerce that are  
5 used in the services and offerings that comprise their respective businesses.

6 109. The antitrust laws are concerned with protecting the economic freedom of  
7 participants and consumers in the relevant market. The aims and objectives of the antitrust  
8 laws are directed at encouraging innovation, industry, and competition. The central purpose  
9 of the antitrust laws is to preserve competition and it is that interaction of competitive forces  
10 that benefits consumers. The antitrust laws protect consumers from harm directly related to  
11 the unlawful removal of a competitive service or product from the marketplace.

12 110. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*,  
13 monopolization of any part of the trade or commerce among the States. A claim for  
14 unlawful monopolization under Section 2 has three requisite elements: (1) the defendant  
15 possesses monopoly power in the relevant market; (2) the defendant has willfully acquired  
16 or maintained that power; and (3) the defendant's conduct has caused antitrust injury.

17 111. Dreamstime is advancing a traditional monopoly maintenance antitrust claim  
18 asserting that it is a direct consumer-purchaser of Google's AdWords services in the online  
19 search advertising market in which Google has maintained and abused its entrenched  
20 monopoly position by means of discriminatory, suppressive and anticompetitive conduct  
21 directed at Dreamstime, and others. Google has engaged in this scheme for the  
22 anticompetitive purpose of maintaining its monopoly in online search advertising. Google's  
23 maintenance of its monopoly depends upon fostering and maintaining its strategic alliances  
24 with its partners, Shutterstock and Getty Images, and shielding its online search website  
25 service offering, Google Images, from competition from Dreamstime and other online stock  
26 images providers.

27 112. Because of Google's discriminatory practices and conduct, contracts and  
28 agreements with Dreamstime's rivals, its rigged and tainted AdWords bidding process, and

the other exclusionary and anticompetitive actions carried out by Google, the monopolist, in the online search advertising market, plaintiff Dreamstime has lost actual and prospective customers, business and Internet traffic – all necessary and essential components to survive and prosper as an online stock photography competitor. Simultaneously, Google’s primary competitors have lost further market share in image-related search and have a diminished capacity to obtain access to competing stock photo supply to integrate into their search advertising networks.

113. **Relevant Product/Service Markets – Online Search Advertising.** The relevant product or service market (or submarket) for antitrust purposes is the online search advertising market. There are no reasonable substitutes for online search services and no other means by which consumers and Internet users can reasonably and efficiently perform automated searches for online data and websites. Likewise, there are no reasonable substitutes for the provision of online search advertising, a marketplace in which Dreamstime is a direct purchaser-consumer.

114. Whether the online search advertising segment is deemed to be a separate and distinct economic relevant market or submarket makes no substantive difference with respect to assessing Google’s market or monopoly power because it dominates and controls in excess of a 70% market share in *both* online search and online search advertising. Moreover, the two segments are wholly interrelated and accessible on the same website of Google.

115. The product market includes the pool of goods and services that enjoy reasonable interchangeability of use and cross-elasticity of demand. The cross-elasticity of demand between online search advertising services and other forms of finding such information/advertisements is extremely low.

116. The DOJ and FTC have both recognized a relevant market defined as online search advertising on multiple occasions, specifically as it relates to Google.

117. Dreamstime is dependent upon and a direct purchaser-consumer of various Google online search advertising services. Dreamstime is a distributor and seller of online

1 stock photography. Competition for consumers for online stock photography services has  
 2 been excluded, destroyed, and or restrained because of Google's maintenance, exploitation,  
 3 manipulation and abuse of its monopoly power in the relevant market (or submarket) for  
 4 online search advertising.

5 118. Relevant market definition is a *fact-intensive* determination.

6 119. **Relevant Geographic Market – United States**. The relevant geographic  
 7 market for antitrust purposes in this case is the United States. The relevant geographic  
 8 market is the area of effective competition in which the parties operate and to which  
 9 customers can practicably turn for the desired services. The online services provided by  
 10 Google in the United States differ from those it offers or provides in foreign countries and  
 11 different rules and regulations often apply.

12 120. **Google Possesses Monopoly Power**. Throughout the relevant time period,  
 13 Google has been the dominant and entrenched player in the domestic online search market  
 14 and the linked and interrelated online search advertising market (to the extent those markets  
 15 are considered economically distinct), possessing a market share of at least 70%. Generally,  
 16 a market share of 65% or more is a *prima facie* showing of monopoly power or when the  
 17 defendant owns a “dominant share” of the market.<sup>33</sup> Accordingly, Google is a monopolist in  
 18 this market(s). Google has the power to control prices, exclude competition, reduce output  
 19 and selection, and/or stifle technology and innovation in the relevant market(s).

20 121. Market or monopoly power determination is a *fact-intensive* issue reserved for  
 21 the fact-finder.

22 122. Google has maintained, exploited, and abused its monopoly power in the  
 23 online search advertising market in violation of the monopolization proscription of Section 2  
 24 of the Sherman Act. Plaintiff Dreamstime and other of its rivals in the online stock  
 25 photography industry are consumer-purchasers of various of Google's online advertising  
 26 services, are competitors for the purchase of related search terms for Google's AdWords  
 27 \_\_\_\_\_

28 <sup>33</sup> *Image Technical Services, Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1206 (9th Cir. 1997); *see also Rebel Oil Co. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995).

1 business, and have suffered antitrust injury and damages as a direct consequence of  
2 Google's monopoly exploitation, manipulation and abuses.

3 123. **Significant Barriers to Market Entry and Expansion Exist.** Significant  
4 and high barriers to market exist that preclude or discourage new firms from entering the  
5 domestic online search advertising market and challenging the behemoth Google's  
6 entrenched monopoly position. Significant and high barriers to expansion also exist, which  
7 is evidenced by the fact that only a small number of competitors have managed to  
8 marginally penetrate and expand in this market which is dominated and controlled by  
9 Google. Indeed, many potential big players have exited the online search advertising  
10 market, and none, including rivals Bing and Yahoo!, have been able to capture any  
11 significant market share.

12 124. Some of these significant barriers to entry and expansion include: (1)  
13 requirement of intellectual property and licenses; (2) regulatory controls and restrictions; (3)  
14 high capital costs; (4) economies of scale; (5) control and maintenance of technological  
15 resources; (6) brand loyalty; (7) entrenched user preferences; and (8) immense network  
16 effects.

17 125. **Google's General Intent to Monopolize.** Google has undertaken its clearly  
18 anticompetitive and exclusionary conduct with the intent and purpose of maintaining and  
19 abusing its monopoly in the online search advertising market (by increasing Google Images'  
20 dominance and increasing its own stock photo offerings within its ad network) and to  
21 vanquish and injure Dreamstime and other smaller rivals in the online stock photography  
22 industry.

23 126. Google has acted to eliminate, destroy, or foreclose meaningful competition in  
24 the relevant market through the discriminatory tactics described above. Google's conduct  
25 discourages, prevents, and/or precludes consumers from finding, accessing and/or buying  
26 services from Dreamstime and other online stock photo repositories directly, which in the  
27 long-run would erode Google's standing as the first place to go via its Google Images  
28 feature to search for, browse and obtain stock photos on the Internet. During the relevant

1 time period, Google has provided services to Dreamstime, it has been keenly aware of its  
2 capabilities and has deemed Dreamstime to be a target that must be minimized, suppressed  
3 and/or eliminated.

4 127. **Dreamstime Has the Requisite Antitrust Standing to Sue.** Section 4 of the  
5 Clayton Act confers standing to sue for damages to “any person who shall be injured in his  
6 business or property by reason of anything forbidden by the antitrust laws.” (15 U.S.C.  
7 §15(a)). Section 4 “does not confine its protection to consumers, or to purchasers, or to  
8 competitors, or to sellers. The Act is comprehensive in its terms and coverage, protecting  
9 all who are made victims of the forbidden practices by whomever they may be  
10 perpetrated.”<sup>34</sup>

11 128. Plaintiff Dreamstime has the requisite standing to assert and maintain antitrust  
12 claims against Google as a participant in Google’s market that has suffered antitrust injury  
13 because of Google’s maintenance, exploitation, and abuse of its monopoly power through its  
14 discriminatory and exclusionary conduct. Dreamstime is a direct purchaser-consumer of  
15 Google’s AdWords services.<sup>35</sup> Consumers use Google’s online search and search  
16 advertising services to locate, access, and buy online stock photos from Dreamstime, and  
17 other market participants, and some of these *same* consumers also access and use Google’s  
18 “Google Images” online image search service to do the same. All of these online services  
19

20 <sup>34</sup> *Blue Shield v. McCready*, 457 U.S. 465, 472 (1982); *see also Novell, Inc. v. Microsoft*  
21 *Corp.*, 505 F.3d 302, 310-320 (4th Cir. 2007) (non-competitor of defendant Microsoft had  
22 standing to advance its monopoly maintenance claim based upon operating system market);  
23 *Hanover 3201 Realty, LLC v. Village Supermarkets, Inc.*, 806 F.3d 162, 172-77 (3rd Cir.  
24 2015).

25 <sup>35</sup> *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979) (“[C]onsumers of retail goods and  
26 services have standing to sue under” Section 4 of the Clayton Act); *Glen Holly*, 343 F.3d at  
27 19985 (“consumer” of alleged violator’s goods or services has antitrust standing); *In re*  
28 *TFT-LCD (Flat Panel) Antitrust Litigation*, 586 F. Supp. 2d 1109, 1118 (N.D. Cal. 1998)  
(direct purchasers of defendants’ product have antitrust standing); *In re Netflix Antitrust*  
*Litigation*, 506 F. Supp. 2d 308, 316 (N.D. Cal. 2007) (finding that purchasers of  
defendant’s products are participants in the same relevant market); *Ritz Camera & Image,*  
*LLC v. SanDisk Corp.*, 772 F. Supp. 2d 1100, 1108 (N.D. Cal. 2011) (plaintiff, a direct  
purchaser of products from defendants, “considered a participant in the same market as  
Defendants”); *In re eBay Seller Antitrust Litigation*, 545 F. Supp. 2d 1027, 1033 (N.D. Cal.  
2008) (plaintiff vendors/consumers of defendant eBay’s online auction services conferred  
antitrust standing).



are interrelated and share and draw business from the *same* potential customer base. Google also has licensing and other written agreements with various online stock photography competitors of Dreamstime, such as Shutterstock and Getty Images, that are designed to suppress and exclude competition with Google and partnerships with Google’s chief search advertising rivals. Dreamstime and other online stock photography providers are critically dependent upon Google’s search advertising services for website traffic and customers.

129. In addition to Dreamstime’s status as a “consumer” of Internet search advertising, Google’s services and monopoly conduct are inextricably intertwined with and materially affect competition in the online stock photography line of commerce, including the Google Images service accessible via a prominent tab on its own search website.<sup>36</sup> Consumers that access and use Google’s website to search for online stock photo providers, and many of those who click on AdWords sponsored/generated sites/ads, are also the potential/actual consumers of Dreamstime’s online services for free and for-pay stock photo images.

130. Finally, by reason of Dreamstime’s consumer business relationship and service contracts with Google, for AdWords and other services, it is a “participant” and consumer in the online search advertising market, and a competitor with respect to Google Images.<sup>37</sup> Consequently, Dreamstime possesses the requisite antitrust standing to bring and maintain this antitrust monopolization claim.

131. **Google’s Overall Predatory and Exclusionary Scheme and Conduct.** Google has willfully acquired and/or maintained its monopoly power in the online search advertising market (or submarket) and has wielded and abused that power using anticompetitive and exclusionary means, including by excluding and distorting competition

<sup>36</sup> *McCready*, 457 U.S. at 479-81, 483-84; *see also In re Qualcomm Antitrust Litigation*, 292 F. Supp. 3d 948, 965-69 (N.D. Cal. 2017); *In re Flash Memory Antitrust Litigation*, 738 F. Supp. 2d 1011, 1023-24 (N.D. Cal. 2010).

<sup>37</sup> *American Ad Management, Inc. v. General Telephone Co.*, 190 F.3d 1051, 1057-58 (9th Cir. 1999); *Amarel v. Connell*, 102 F.3d 1494, 1509-10 (9th Cir. 1996); *Yellow Pages Cost Consultants v. GTE Directories Corp.*, 951 F.2d 1158, 1159-64 (9th Cir. 1991).

1 in online stock photography and among entities that compete for AdWords search terms  
2 relating to online stock photos.

3 132. Section 2 of the Sherman Act prohibits a monopolist from employing even  
4 otherwise lawful practices if they unreasonably exclude, suppress or foreclose competition  
5 to existing or potential competitors in the relevant market.

6 133. Google has engaged in a coordinated and calculated monopolistic and  
7 discriminatory “overall scheme” which is described specifically and plausibly above. Such  
8 unlawful conduct undertaken by Google, the monopolist in the online search advertising  
9 market, includes: (1) utilizing a rigged, biased and tainted subjective bidding process to  
10 control the purchase of Google’s AdWords advertising services; (2) downgrading and  
11 distorting Dreamstime’s online search ranking (making it essentially invisible in Google’s  
12 search results), without justification, forcing Dreamstime to spend additional funds on  
13 Google’s AdWords program, thereby raising Dreamstime’s costs of competing and  
14 threatening to drive it out of business; (3) entering into multi-year contractual partnerships  
15 with Shutterstock and Getty Images to give them favored status that has not been available  
16 to Dreamstime and other smaller stock photography suppliers; (4) selectively enforcing its  
17 rules and terms governing its online AdWords advertising program to disadvantage  
18 Dreamstime, thereby further undermining its ability to supply stock photos to its customers  
19 and Google’s rivals; (5) moving and elevating, in the online search rankings,  
20 inconsequential or underperforming (junk website) rivals ahead of Dreamstime and other  
21 established, high quality or low-priced online stock photography repositories; (6)  
22 suspending Dreamstime’s mobile app purportedly for violations of its policies that the app  
23 did not violate, and later de-indexing Dreamstime’s mobile app for the most common search  
24 for stock photos within the Google Play app store; (7) allowing users to bypass  
25 Dreamstime’s licensed images and obtain them directly on Google Images without paying  
26 for them; and (8) engaging in unlawful activity to capture and use privacy protected data of  
27 its consumers and advertisers, thereby maintaining and enhancing Google’s monopoly  
28 power and bolster its network effects.

1           134. *Google Has Rigged its AdWords Search Term Bidding Process.* The  
2 purported bidding process or mechanism Google uses to market and sell its AdWords  
3 advertising services is not legitimate but instead is rigged, anticompetitive, skewed and  
4 biased against Dreamstime as applied. Google’s AdWords bidding protocol is not  
5 objectively-based and key search words are not necessarily awarded on a quantitative basis  
6 to the highest bidder. Instead, winning bids are determined by Google itself based on  
7 wholly subjective criteria, in addition to the monetary component, used to arrive at a  
8 “quality score” which consists of Google’s own internal assessment of the bidding  
9 advertiser’s website, the relevance of the key search words to the bidder’s website or  
10 business, and other undisclosed factors. So even in instances where Dreamstime would  
11 otherwise outbid its stock photo competitors for AdWords, it could still be an unsuccessful  
12 bidder.

13           135. Moreover, Google can invalidate or override any bid because it has reserved  
14 for itself, and its partners, the right or option to participate in the bidding and outbid  
15 Dreamstime, and others. This alone destroys any notion that the bidding process is above  
16 board or is fair.

17           136. Google does not disclose the exact weighting of its bidding algorithms. As  
18 such, Google’s bidding process, far from competitive, has subjective components and is a  
19 black box. Google has manipulated the subjective components of its bidding process to  
20 unevenly and unfairly apply it toward Dreamstimes vis-à-vis Google’s stock photo partners  
21 and to exclude Dreamstime from many bids.

22           137. Even in those instances where Dreamstime has been chosen by Google as the  
23 winning bidder for AdWords, based on its arbitrary and infected “quality score,”  
24 Dreamstime overpays for AdWords because of that artificially deflated quality score. Even  
25 then, there is no guarantee or other assurance that Google will not subsequently cancel and  
26 remove Dreamstime’s winning advertising campaign for capricious reasons – which it has  
27 actually done on numerous occasions.

28           138. Consequently, Google’s bidding process does not function on a level playing

1 field. To compound matters, Dreamstime enters the bidding process in a competitive hole,  
 2 since it must overcome the biased “quality score” it has been assigned by Google, and  
 3 because of its virtually invisible search ranking. Dreamstime is competitively  
 4 disadvantaged because it must spend enormous sums to buy-in to AdWords and dig its way  
 5 out of the hole to be competitive and obtain visibility and exposure.<sup>38</sup>

6 139. *Google Has Distorted and Suppressed Dreamstime’s Online Search Result*  
 7 *Visibility.* Online organic search results are an essential component of, and are completely  
 8 interrelated to, the online search advertising market because Google sells ads that  
 9 seamlessly appear on its website within these results. Google has distorted and downgraded  
 10 Dreamstime’s online search ranking in this market to the point of making it virtually  
 11 invisible to users for the most common and logical searches for online stock photography.  
 12 This biased practice also negatively impacts Dreamstime’s search rankings on other  
 13 competing search engines over time, such as Yahoo! and Bing, because all search engines  
 14 base their search results and rankings on user behavior throughout the Internet.

15 140. Accordingly, Dreamstime’s effective elimination by Google from organic  
 16 search results forecloses a distribution channel to Dreamstime, causing it to overspend  
 17 advertising funds on Google’s AdWords program as well as significant infrastructure costs  
 18 aimed at improving and restoring its tainted search ranking. This raises Dreamstime’s costs  
 19 of competing and reduces its ability to compete for advertising in the AdWords program in  
 20 \_\_\_\_\_

21 <sup>38</sup> AdWords and organic search work in tandem in many important ways for AdWords  
 22 customers, besides the fact that a reduced organic ranking requires more AdWords spends  
 23 for acquisitions. Many times a customer will first click on a free search result, then revisit  
 24 the site later through an ad, or vice versa, before making a purchase. Because one of those  
 25 clicks is free to the AdWords customer, this helps to lower the targeted cost-per-acquisition  
 26 necessary to obtain a conversion through AdWords. These “assisted conversions,” as  
 27 Google calls them, lower the targeted CPA. *See*  
 28 <https://powerdigitalmarketing.com/blog/seo-vs-ppc-how-to-use-seo-ppc-together/>;  
<https://www.click.co.uk/blog/assisted-conversions-for-seo/>. Thus, a demotion of organic  
 rank directly increases AdWords costs for an AdWords customer.

1 the online search advertising market.

2       141. *Google Has Entered into Anticompetitive Multi-Year Contractual Strategic*  
3 *Alliances with Dreamstime's Rivals, Shutterstock and Getty Images.* Google has partnered  
4 with Dreamstime's most significant rivals, Shutterstock and Getty Images, through "multi-  
5 year" contracts to license their images for Google to sell directly through its own advertising  
6 network. By virtue of these strategic alliances, Shutterstock and Getty Images' stock photo  
7 libraries are now Google's stock photo library, and *Google offers their images directly to its*  
8 *ad customers within its market.* These strategic alliances give Google a critical competitive  
9 advantage over its online search advertising competitors, such as Bing and Yahoo!, because  
10 it now has ready access to hundreds of millions of licensed images that it would otherwise  
11 have taken years to obtain without these valuable partnerships, thereby further entrenching it  
12 monopoly position.

13       142. In tandem with these strategic partnerships, Google has provided favored  
14 treatment to Shutterstock and Getty Images (who together control an approximate 70%  
15 share of the online stock photo business) within the online search advertising market and has  
16 allowed them to poach customers from Dreamstime, and thwart its efforts to attract and  
17 obtain new customers. These cooperative arrangements increase Shutterstock and Getty  
18 Images' reliance on Google even more, decrease their incentive to compete with Google  
19 Images directly, and give Google further access and control over their users' data and  
20 profiles and other valuable information about their businesses. Most importantly, because  
21 Google now directly sells Shutterstock and Getty Images' stock photos to its ad customers  
22 (instantly making it one of the largest distributors of stock photos in the world), Google  
23 directly benefits from their increased dominance. As their libraries grow, so does Google's  
24 offering of stock photos in its online advertising network, thereby directly increasing its  
25 online search advertising monopoly.

26       143. *Google Has Discriminatorily Enforced the Policies and Procedures*  
27 *Governing its AdWords Program.* Google violates its own AdWords rules and policies to  
28 suppress and exclude Dreamstime and others. Google has selectively enforced its policies

1 and procedures incorporated into its AdWords Agreement to eliminate Dreamstime's most  
 2 cost-effective ads, further undermining its ability to effectively and fairly compete for  
 3 AdWords advertising campaigns. This conduct has the damaging effect of increasing  
 4 Dreamstime's advertising costs, and hence the costs to consumers, and facilitates the  
 5 charging by Google of supracompetitive prices for its AdWords services.

6 144. *Google Has Promoted and Elevated Junk Websites over Dreamstime's*  
 7 *Legitimate Website.* Google has promoted and elevated various "Junk Websites" with  
 8 dramatically less relevant information related to a targeted search, to push Dreamstime out  
 9 of view on Google's search site and place it at a competitive disadvantage. This  
 10 exclusionary and discriminatory conduct reduces consumer choice and degrades the quality  
 11 of searches in the relevant market.

12 145. *Google Has Suspended Dreamstime's Mobile App and De-Indexed It within*  
 13 *the Google Play App Store for the Most Common Search Term for Stock Photography.*  
 14 Google has suspended Dreamstime's mobile app and eliminated it from view in its Google  
 15 Play app store for the most common stock photography search. This exclusionary and  
 16 discriminatory conduct reduces consumer choice and degrades the quality of searches in the  
 17 relevant market.

18 146. *Google Has Utilized its Google Images Service to Misappropriate*  
 19 *Dreamstime's Stock Images and Divert Customers Through its Google Images Tab.*  
 20 Through use of the Google Images tab on the Google search website, Google has allowed its  
 21 user searchers to access and obtain Dreamstime's licensed photos without paying for those  
 22 images and to divert its actual and potential customers. Google Images permits users to  
 23 obtain Dreamstime's and other rivals' photos, as well as photos Google has licensed or  
 24 acquired, and keeps users captive on the Google search site. This generates advertising  
 25 revenue to Google, in lieu of users visiting the Dreamstime website to purchase images or  
 26 utilizing rivals search sites, such as Bing and Yahoo!, to search for and obtain stock photos.

27 147. *Google Has Collected and Captured Privacy Data from its Website Users and*  
 28 *Advertisers to Gain an Unfair Competitive Advantage.* Google unlawfully captures and



1 uses private data it has obtained from users and advertiser on its search website to maintain  
 2 and enhance its monopoly power. The valuable data it collects is a significant input and  
 3 source of Google's impenetrable market position and further raises the already significant  
 4 barriers to market entry and weakens its existing rivals such as Bing and Yahoo!. Google  
 5 has capitalized on the network effect of its data collection efforts.

6 148. **Google's Unlawful Overall Scheme Must be Viewed and Assessed as a**  
 7 **Whole.** The purpose of Google's predatory and discriminatory overall scheme is to limit or  
 8 foreclose competition for online stock photography and maintain its monopoly in online  
 9 search advertising and protect and insulate Google Images stock photo service from  
 10 competition. Under the "overall scheme" doctrine of antitrust liability, each of the alleged  
 11 anticompetitive acts standing alone need *not* be unlawful for the scheme to be actionable.  
 12 "[A]cts which are in themselves legal lose that character when they become constituent  
 13 elements of an unlawful scheme."<sup>39</sup> Indeed, it is not necessary for Dreamstime to prove that  
 14 each allegedly anticompetitive act was itself sufficient to demonstrate an abuse of monopoly  
 15 power. Finally, it is not proper to focus on specific individual acts of an accused monopolist  
 16 while refusing to consider their overall combined effect – what has been called the  
 17 "synergistic effect" of the mixture of the elements.

18 149. Google has acted to maintain its monopoly power, and its existing enormous  
 19 power and anticompetitive conduct has enabled it to do so, in flagrant violation of Section 2  
 20 of the Sherman Act.

21 150. The "conduct" element of this offense is the use of monopoly power to  
 22 foreclose competition, to gain a competitive advantage, or to destroy a competitor. Conduct  
 23 is anticompetitive when it unnecessarily excludes or handicaps competitors to gain or  
 24 maintain a monopoly. Anticompetitive or exclusionary practices are acts designed to deter  
 25 potential rivals from entering the market, intervening or preventing access to customers, or  
 26 preventing existing rivals in the market from increasing their output. Anticompetitive acts  
 27

28  
 39 *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 707 (1962).

are not fair competition on the merits of price, selection, quality or other factors, but instead acts that have the deleterious effect of preventing or excluding competition or frustrating the efforts of other firms to compete for customers within the relevant market. Conduct by a monopolist that constitutes a deliberate effort to discourage or thwart customers from doing business with its rivals is anticompetitive.

151. Conduct or practices when engaged in by a non-monopolist that otherwise might comply with antitrust law may be impermissibly exclusionary and unlawful when engaged in by a monopolist.<sup>40</sup> Indeed, a monopolist is not free to take certain actions that a firm in a competitive (or even oligopolistic) market may take, because there is not a market constraint on a monopolist's behavior. Consequently, a monopolist is precluded from employing otherwise lawful practices that unnecessarily diminish or exclude competition.

152. Google's anticompetitive acts affect a substantial amount of interstate commerce in the relevant market and constitute unlawful monopolization. Google's conduct is not motivated by technological or efficiency concerns and has no valid or legitimate business justifications. Any such justifications that Google may proffer are merely pretextual. In sum, the purpose and effect of Google's anticompetitive conduct is to preserve, exploit, and promote its monopoly stranglehold position in the online search advertising marketplace and to misuse that mighty power to exclude, control, and restrict competition for online stock photography to the detriment of consumer welfare, competition, innovation, and plaintiff Dreamstime.

153. The determination of whether conduct is "anticompetitive" under Section 2 is a question of *fact* for the jury to decide.

154. **Causal Antitrust Injury to Plaintiff, Competition, and Consumers.**

Google's monopolistic conduct has caused antitrust injury to plaintiff Dreamstime, competition (in Google's and Dreamstime's markets), and consumers (in Google's and

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<sup>40</sup> *Greyhound Computer Corp., Inc. v. International Business Machines Corp.*, 559 F.2d 488, 498 (9th Cir. 1977); *Free Hand Corp. v. Adobe Systems Inc.*, 852 F. Supp. 2d 1171, 1180 (N.D. Cal. 2012) (Under Section 2, anticompetitive conduct may include otherwise lawful conduct).

Dreamstime’s markets). The elimination of a *single* competitor violates the antitrust laws if it harms competition (though Dreamstime has alleged injury to other similarly-situated competitors).<sup>41</sup> The elimination of market alternatives for products or services and harm to consumer welfare are cognizable antitrust injuries. Congress designed the Sherman Act as a consumer welfare prescription, and it is the interaction of competitive forces that benefits consumers. Plaintiff Dreamstime has suffered causal antitrust injury as a consumer and participant in the online search advertising market and the broader market.<sup>42</sup>

155. As a direct result of Google’s abuse of its online search advertising monopoly through anticompetitive conduct and restrictions on competition, Dreamstime and other smaller online stock photography competitors have been restricted from functioning in a competitive open market, output has been reduced or limited, and the quality and freedom of choice of online stock photographs and providers have been reduced and diminished. Google’s monopolistic and discriminatory conduct has severely hindered plaintiff’s ability to attract new customers and traffic to its website, and the type and number of stock images it may distribute, license or sell has diminished significantly. Moreover, Google’s monopolistic conduct has hampered Yahoo! and Bing’s ability to compete with Google’s image-related search function and search-based display ad offerings, which will further erode their market share.

156. Google’s monopolistic and discriminatory conduct has erected a barrier that precludes effective entry by other would-be competitors into the online search advertising market. In addition, the quality, variety and choice of online stock photography offerings that are visible and accessible on Google’s website have been reduced and constrained to the

<sup>41</sup> *E.W. French & Sons, Inc. v. Gen. Portland, Inc.*, 885 F.2d 1392, 1401 (9th Cir. 1989).

<sup>42</sup> *Glen Holly Entertainment, Inc. v. Tektronix Inc.*, 343 F.3d 1000, 1008 (9th Cir. 2003) (“Consumers in the market where trade is allegedly restrained are presumptively the proper plaintiffs to allege antitrust injury.”); *American Ad Management*, 190 F.3d at 1057 (Plaintiff, a broker for advertisements, was “a participant in in the relevant market and it has suffered an [antitrust] injury in that market”); *In re Netflix Litigation*, 506 F. Supp. 2d at 315 (consumers of defendant Netflix’s products “were participants in the same market” and sufficiently plead “that they have suffered an antitrust injury”).

1 detriment of consumers in Google's market.

2 157. Google's unlawful maintenance of its online search advertising monopoly and  
 3 anticompetitive conduct have caused antitrust injury and, unless enjoined by this Court, will  
 4 continue to produce at least the following anticompetitive, exclusionary, and injurious  
 5 effects upon competition, consumers, and interstate commerce: (1) AdWords spends for  
 6 lower cost stock photography sites like Dreamstime will continue to increase, thereby  
 7 increasing costs to consumers and/or distorting and eliminating consumer choices; (2)  
 8 competition for online distribution and sale of stock photographs has been substantially and  
 9 unreasonably restricted, lessened, foreclosed, and eliminated; (3) output in the online search  
 10 advertising market has been reduced, suppressed and restricted; (4) barriers to entry to  
 11 would-be rivals into the online search advertising market have been raised which thereby  
 12 has limited the possible alternate online search advertising outlets, other than Google,  
 13 available to Dreamstime and other online stock photo competitors; (5) consumer choice has  
 14 been, and will continue to be, significantly reduced, limited, and constrained as to selection,  
 15 price, and quality of online stock photographs; (6) access to Dreamstime's competitive  
 16 services has been artificially restricted and reduced, and its offerings will continue to be  
 17 excluded; and (7) Google has maintained its entrenched monopoly position in the online  
 18 search advertising market to the detriment of smaller rivals, such as Bing and Yahoo!.

19 158. The issue of "antitrust injury" is a *fact* question for the jury.

20 159. **Plaintiff Dreamstime's Antitrust Damages.** As a direct and proximate  
 21 result of Google's past and continuing anticompetitive practices and conduct, plaintiff has  
 22 suffered, and will continue to suffer, substantial financial injury to its business and property.  
 23 Defendant's intentional and focused anticompetitive and discriminatory scheme has  
 24 cumulatively, incrementally, and unreasonably restricted competition and devastated  
 25 Dreamstime's once thriving and growing business. Google's unlawful, collective conduct  
 26 has been a material and proximate cause of Dreamstime's injuries. As a result, plaintiff  
 27 Dreamstime has been deprived of revenues and profits it would have otherwise made,  
 28 incurred higher advertising costs, suffered diminished market growth, and sustained a loss

1 of goodwill and going concern value.

2 160. Plaintiff Dreamstime has not yet calculated the precise extent of its past actual  
3 damages and cannot now estimate with precision the future damages that continue to accrue,  
4 but when it does so, it will seek leave of the Court to insert the amount of the damages  
5 sustained herein. Plaintiff also seeks injunctive relief to prevent further irreparable and  
6 continuing injury to its business and property and consumers caused by Google's unlawful  
7 monopolization scheme.

## 8 **SECOND CAUSE OF ACTION**

### 9 **(Breach of Contracts – AdWords and Google Play Agreements)**

10 161. Dreamstime realleges the preceding paragraphs of this First Amended  
11 Complaint as if fully set forth herein.

12 162. This Court has jurisdiction over this Second Cause of Action based on  
13 diversity and supplemental jurisdiction.

14 163. **The AdWords Agreement.** Dreamstime entered into enforceable contracts  
15 with Google whereby Google agreed to provide advertising services for Dreamstime in  
16 exchange for various fees. The AdWords Agreement provides that, in consideration for  
17 Google displaying a customer's ads, the customer will pay Google at a price per click  
18 determined by Google's AdWords auction program, subject to certain limitations.

19 164. The AdWords Agreement was an adhesion contract intended to be executed  
20 by every single purchaser of AdWords. It incorporated by reference the AdWords program  
21 policies and various FAQ answers and support pages describing Google's policies. Google  
22 intended this standard agreement to be signed in the same form by all purchasers of  
23 AdWords, and intended the policies and descriptions of the services Google was to provide  
24 to apply equally to all who executed it.

25 165. In part, Google's advertising policies provide that overdelivery is a breach of  
26 contract. The definition of overdelivery in the AdWords Agreement and the policies and  
27 procedures incorporated by reference therein has changed over time. One of the current  
28 policies states that "in a given billing period, you're never charged more than the average

1 number of days in a month (roughly 30.4) times your daily budget.” As noted above,  
 2 however, for most of the time this policy only allowed minimal daily excesses above daily  
 3 spending limits and/or provided for credits to be applied for any excesses.

4 166. Another of Google’s policies relates to an alternative method for delivering  
 5 budgeted campaigns based upon the Cost-Per-Acquisition (“CPA”), instead of the  
 6 traditional cost-per-click. In CPA bidding, bidders set a Target CPA, which Google  
 7 describes as the cost-per-acquisition that a customer should expect to pay to get as many  
 8 conversions as possible within a set CPA goal. As explained in the Help Center of Google  
 9 Ads ([support.google.com/google-ads/answer/6268632?hl=en](http://support.google.com/google-ads/answer/6268632?hl=en)): “Target CPA is a Google  
 10 Ads Smart Bidding strategy that sets bids to help get as many conversions as possible at the  
 11 target cost-per-acquisition (CPA) you set. It uses advanced machine learning to  
 12 automatically optimize bids and offers auction-time bidding capabilities that tailor bids for  
 13 each and every auction.”

14 167. The policies also include a specific list of prohibited conduct that would  
 15 subject an advertisement to rejection or removal, including “ads that mislead or trick the  
 16 user into interacting with them[,]” commonly referred to as “trick to click.” The policies go  
 17 on to state that “an account may be suspended if you have several violations or a serious  
 18 violation.”

19 168. **Google’s Breach of the AdWords Agreement.** Despite the AdWords  
 20 Agreement, Google provided Dreamtime advertising marketing campaigns that did not  
 21 work and did not meet Dreamtime’s expectations, applied its policies and procedures  
 22 unevenly toward Dreamtime, cancelled some of Dreamtime’s ad campaigns for violating  
 23 stated policies that the ad campaigns did not violate and overcharged and overdelivered  
 24 AdWords to Dreamtime, all in breach of the AdWords Agreement. For example, Google  
 25 consistently removed Dreamtime’s lowest cost per acquisition ads as being “trick to click”  
 26 even though the ads that were not “trick to click.” Google failed to provide the agreed upon  
 27 services, apply the standard policies and perform the obligations that the AdWords  
 28 Agreement required it to do.



169. Among other things, Google breached its contract with Dreamstime when it:

- manipulated Dreamstime’s organic search ranking unfairly and illegally to force Dreamstime to spend an unreasonable amount of money on additional AdWords campaigns that would not otherwise have been necessary;
- cancelled Dreamstime’s most successful ad campaigns based on false accusations of policy violations;
- improperly suspended Dreamstime’s account based on unfounded accusations of “policy violations”;
- prevented Dreamstime from running successful ad campaigns while allowing the *exact same* advertisements to be placed by other competitors and other parties to the same standard contracts; and
- overdelivered advertising campaigns (including target CPA campaigns), causing spending limits for certain campaigns to be exceeded on a regular and systematic basis.

170. **The Google Play Agreement.** Dreamstime and Google have entered into a separate agreement for inclusion of Dreamstime’s mobile app in the Google Play app store (“Google Play Agreement”). The Google Play Agreement is similar in all relevant respects to the AdWords Agreement noted above (i.e., it is an adhesion agreement, it incorporates policies and procedures, and it is intended to be executed in the same form by all who publish apps in the Google Play app store). Exhibit “O” hereto contains the current version of the Google Play Agreement. The Google Play Agreement incorporates by reference certain policies, including a policy against pornographic materials. Section 8.3 further states: “If Google becomes aware and determines in its sole discretion that a Product . . . violates . . . applicable policies, or other terms of service, as may be updated by Google from time to time in its sole discretion . . . then Google may reject, remove, suspend or reclassify the Product from Google Play . . . Google reserves the right, at its sole discretion, to suspend and/or bar any Product . . . from Google Play . . .”

171. **Breach of the Google Play Agreement.** Google has breached the Google

1 Play Agreement in at least two respects: (1) by removing Dreamtime's mobile Buyer App  
 2 from the Google Play app store purportedly for violating a policy against pornographic  
 3 content that it did not violate; and (2) by de-indexing Dreamtime's Buyer App for the most  
 4 common search for stock photo apps, effectively removing it from the app store.

5 172. Dreamtime spent millions of dollars in reliance on Google's  
 6 recommendations to avoid ad cancellations and account suspensions based on purported  
 7 policy violations and the knowingly false explanations and material omissions alleged  
 8 above. Through its scheme to increase advertising and consulting revenue at Dreamtime's  
 9 expense, Google fraudulently concealed that those recommendations would never work.  
 10 Dreamtime suffered direct damages as a result of its reasonably reliance upon Google's  
 11 misrepresentations and omissions.

12 173. **Dreamtime Has Performed Its Obligations Under the AdWords and**  
 13 **Google Play Agreements.** Dreamtime has at all times performed all its significant duties  
 14 and obligations under the AdWords Agreement and the Google Play Agreement except to  
 15 the extent that Dreamtime was excused or prevented from doing so by the acts and  
 16 omissions of Google.

17 174. **Google's Breaching Conduct Voids Its Limitations of Liability Clauses.**  
 18 Google's breaching conduct was the result of fraud or willful conduct and injury to  
 19 Dreamtime, was in violation of law, and/or was at least negligent, such that any limitation  
 20 of liability clause in the AdWords Agreement or Google Play Agreement is void pursuant to  
 21 California Civil Code § 1668. At most, it has acted intentionally and with reckless disregard  
 22 for Dreamtime's rights. In any event, direct damages are recoverable under the AdWords  
 23 Agreement's limitation of liability clause, and Dreamtime seeks direct damages here in the  
 24 form of overcharges pursuant to the AdWords Agreement.

25 175. As a direct and proximate result of Google's breach of the written contracts,  
 26 Dreamtime has suffered direct, actual, compensatory, and consequential damages in an  
 27 amount to be determined at trial, plus prejudgment interest at the maximum legal rate. These  
 28 damages include but are not limited to lost profits and other consequential damages that are

1 not waivable by contract as a matter of law due to Google's heightened culpability.

2 **THIRD CAUSE OF ACTION**

3 **(Breach of the Implied Covenants of Good Faith and Fair**

4 **Dealing – AdWords and Google Play Agreements)**

5 176. Dreamstime realleges the preceding paragraphs of this First Amended  
6 Complaint as if fully set forth herein.

7 177. This Court has jurisdiction over this Third Cause of Action based on diversity  
8 and supplemental jurisdiction.

9 178. California law implies in every contract a covenant of good faith and fair  
10 dealing such that neither party will compromise the rights of the other to receive the benefits  
11 of the contract. The covenant aims to effectuate the contract's purposes and promises, and to  
12 protect the parties' legitimate expectations. Indeed, the covenant requires each party to do  
13 all things reasonably contemplated by the contract's terms to accomplish its goals.

14 179. Through AdWords, Google creates what it refers to as a "competitive" auction  
15 environment whereby advertisers bid against each other (and Google) for the right to display  
16 ads that appear in search results. Google determines which ads to display by factoring an  
17 advertiser's bid amount and quality score. All participating advertisers agree to the  
18 AdWords Agreement which, through Google's incorporated policies, specifies a detailed list  
19 of prohibited conduct that would subject a winning ad to removal.

20 180. When Dreamstime entered the AdWords Agreement and began bidding  
21 against competitors for ad placement, it did so with the reasonable expectation that Google  
22 would apply its policies and procedures evenly and in good faith toward and among all  
23 participating advertisers. Dreamstime also paid Google daily to determine which of its  
24 advertisements are most effective and to increase their circulation accordingly.

25 181. Google breached the implied covenant when it instead: (1) deliberately used  
26 selective enforcement of its policies to remove Dreamstime's compliant, lower cost  
27 advertisements; (2) mischaracterized and deleted Dreamstime's advertisements as "trick to  
28 click;" (3) removed Dreamstime's app for a policy it did not violate; and (4) overcharged

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Dreamstime for AdWords services based on pretextual or unreasonable grounds to provide an economic advantage to Google and its stock photo partners.

182. The implied covenant of good faith finds particular application where, as here, Google invested itself with absolute discretionary power to affect the rights of Dreamstime. While the covenant is generally not implied to “prohibit a party from doing that which it is expressly permitted by an agreement,”<sup>43</sup> an exception exists when one party is given absolute discretion over whether or not to perform.<sup>44</sup> In such cases, the performance of one party's obligation is dependent on that party's own discretion, which renders the contract illusory. To save such contract terms, courts will read the implied covenant into the term.

183. Google reserved for itself absolute discretion to perform under the AdWords Agreement because it can purportedly remove ads “at any time for any or no reason.” However, such power must be exercised in good faith. Otherwise, the AdWords Agreement is illusory. The only consideration Google provides pursuant to the AdWords Agreement is to display ads at the cost-per-click determined through advertiser auctions. If Google is free to systematically remove Dreamstime’s ads for any or no reason, Google is free to not perform. Thus, if Google invokes its power to remove ads “at any time for any or no reason[,]” its decision would still be subject to the good faith and reasonableness standard in the implied covenant of good faith and fair dealing.<sup>45</sup>

184. Google also breach the implied covenant of good faith and fair dealing in the AdWords Agreement by: (1) improperly disapproving and removing Dreamstime’s low cost per acquisition advertisements as being “trick to click” or for other unreasonable reasons to provide an economic advantage to Dreamstime’s competitors and to overcharge Dreamstime for AdWords services; and (2) pretending to work in good faith to resolve purported “issues” with Dreamstime’s ads while actually intending at all times to remove, misplace, and reject Dreamstime ads on the basis of unfounded violations.

<sup>43</sup> *Carma Developers (Cal.), Inc. v. Marathon Dev. Cal. Inc.*, 2 Cal. 4th 342, 374 (1992).

<sup>44</sup> *Third Story Music, Inc. v. Waits*, 41 Cal. App. 4th 798, 805 (1995).

<sup>45</sup> *Third Story Music*, 41 Cal. App. 4th at 805.

1           185. As with the AdWords Agreement, there exists an implied covenant of good  
2 faith and fair dealing with respect to the Google Play Agreement. Also as with the  
3 AdWords Agreement, Google incorporates policies into the Google Play Agreement that are  
4 intended to apply equally to all who execute the agreement and publish apps in the Google  
5 Play store. Likewise, Google reserves for itself absolute discretion to remove or suspend an  
6 app or account. A covenant of good faith and fair dealing must be implied with respect to  
7 that absolute grant of discretion in order to avoid making the contract illusory.

8           186. Google has breached the implied covenant of good faith and fair dealing in the  
9 Google Play Agreement in at least two respects: (1) by removing Dreamtime's mobile  
10 Buyer App from the Google Play app store purportedly for violating a policy against  
11 pornographic content that it did not violate; and (2) by de-indexing Dreamtime's Buyer  
12 App for the most common search for stock photo apps, effectively removing it from the app  
13 store.

14           187. Dreamtime has at all times performed all its significant duties and obligations  
15 under the AdWords Agreement and the Google Play Agreement except to the extent that  
16 Dreamtime was excused or prevented from doing so by the acts and omissions of Google.

17           188. Google's breaching conduct noted above was the result of fraud or willful  
18 injury to Dreamtime, was in violation of law, and/or was at least negligent, such that any  
19 limitation of liability clauses in the AdWords Agreement and the Google Play Agreements  
20 are void pursuant to California Civil Code § 1668. At most, it has acted intentionally and  
21 with reckless disregard for Dreamtime's rights.

22           189. As a direct and proximate result of Google's breach of the covenant of good  
23 faith and fair dealing, Dreamtime has suffered direct, actual, compensatory, and  
24 consequential damages in an amount to be determined at trial, plus prejudgment interest at  
25 the maximum legal rate. These damages include but are not limited to lost profits and other  
26 consequential damages that are not waivable by contract as a matter of law due to Google's  
27 heightened culpability.  
28

**FOURTH CAUSE OF ACTION**

**(Unfair Competition in Violation of California Business  
and Professions Code § 17200 *et seq.*)**

190. Dreamstime realleges the preceding paragraphs of this First Complaint as if fully set forth herein.

191. This Court has jurisdiction over this Fourth Cause of Action based on diversity and supplemental jurisdiction.

192. Section 17200 *et seq.* of the California Business & Professions Code (“UCL”) is written in the disjunctive and broadly covers three varieties of unfair competition – acts that are unlawful, unfair and/or fraudulent. The UCL statute’s intent and purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. The coverage of section 17200 *et seq.* is broad and intended to enjoin on-going wrongful business conduct in whatever context such activity might occur.

193. Plaintiff Dreamstime is a “person” within the meaning of California Business & Professions Code § 17201. Google’s principal place of business is located within California. Plaintiff Dreamstime is a “consumer” of certain of Google’s online search advertising services, including a purchaser of AdWords services. Dreamstime is also a competitor to Google’s “Google Images” service on Google’s search website and Google is an actual/potential competitor of Dreamstime for the bidding and acquisition of AdWords key search words related to online stock photos/images.

194. As alleged herein, defendant’s exclusionary, predatory, discriminatory, suppressive, deceptive, monopolistic and/or wrongful conduct constitutes “unfair” business practices. When a UCL claim is brought by a “consumer,” as here, the defendant’s conduct may be deemed “unfair” where “the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.”<sup>46</sup>

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<sup>46</sup> *Hodson v. Mars, Inc.*, 891 F.3d 857, 866 (9th Cir. 2018); *see also South Bay Chevrolet v. General Motors Acceptance Corp.*, 72 Cal. App. 4th 861, 856 (1999).



195. To the extent Dreamstime is also deemed to be a potential or actual competitor to Google, as described above, the business competitor “unfairness” test enunciated in *Cel-Tech* is applicable. There the California Supreme Court articulated that conduct that significantly threatens or harms competition, violates the policy or spirit of an antitrust law, or threatens an incipient violation of an antitrust law, may be deemed “unfair” under the UCL.<sup>47</sup>

196. A practice may be deemed “unfair” even if not specifically proscribed by some other law. Under the “unfair” prong of the UCL, the federal antitrust laws and the UCL are not co-dependent. In other words, an actionable “unfair” claim need not be predicated on a viable antitrust violation.<sup>48</sup>

197. As alleged herein, defendant’s anticompetitive conduct is also “unlawful” under the UCL. Within the meaning of section 17200, virtually any violation of any civil or criminal federal, state or municipal, statutory, regulatory, court-made or local law can serve as a predicate offense for an “unlawful” claim. The violations of the federal antitrust laws and/or other suppressive, and deceptive conduct as alleged herein, satisfies the “unlawful” prong of section 17200.

198. In addition, Dreamstime has pleaded “fraudulent” conduct with the requisite specificity, which is an independent basis for UCL liability. In the allegations set forth above, it has alleged: (1) specific misrepresentations and material omissions; (2) knowledge of the falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage.

199. Dreamstime has standing to pursue this claim as Dreamstime has suffered an injury in fact and has lost money or property resulting from Google’s unfair and/or unlawful actions. Dreamstime has paid tens of millions of dollars for Google’s AdWords advertising

<sup>47</sup> *Cel-Tech Communications, Inc. v. Los Angeles Cellular Co.*, 20 Cal. 4th 163, 187 (1999).

<sup>48</sup> *DocMagic, Inc., v. Ellie Mae, Inc.*, 745 F. Supp. 2d 119, 1147 (N.D. Cal 2010) (“On its face, the California definition of ‘unfair’ competition appears to embrace conduct that might not violate the Sherman Act.”); *Sun Microsystems, Inc. v. Microsoft Corp.*, 87 F. Supp. 2d 992, 999-1000 (N.D. Cal. 2000); *Korea Kumho Petrochemical v. Flexsys Am. LP*, 2008 WL 686834, at \*9 (N.D. Cal. Mar. 11, 2008); *In re Google AdWords Litigation*, 2011 WL 7109217 (N.D. Cal. Mar. 17, 2011).

1 and other online services. Google only provided its services selectively to benefit itself at  
2 Dreamstime's expense. Google also selectively applied its disapproval and removal policies  
3 to injure Dreamstime and benefit others such as Shutterstock and Getty Images, Google's  
4 favored partners. Google's anticompetitive and discriminatory actions constitute unfair  
5 and/or unlawful business practices and a scheme of unfair competition with respect to  
6 Google's advertising services and contracts.

7 200. Google has engaged, and continues to engage, in business acts that are unfair,  
8 fraudulent unlawful, exclusionary, discriminatory, deceptive, or misleading with respect to  
9 the AdWords purported bidding process and the paid online advertising search services it  
10 provided to Dreamstime.

11 201. The harm to consumers and competition caused by Google's unfair and/or  
12 unlawful conduct is substantial. There is no legitimate or procompetitive justification for  
13 defendant's anticompetitive and discriminatory conduct.

14 202. Because of, and as a direct and proximate result of, defendant's unfair and/or  
15 unlawful business practices and conduct, Dreamstime has suffered, and will continue to  
16 suffer, financial injury to its business and property. Pursuant to the provisions of the UCL  
17 (sections 17203 and 17535), Dreamstime is entitled to restitution from Google for its  
18 injuries.

19 203. Defendant's unfair, fraudulent and/or unlawful conduct has caused economic  
20 harm to plaintiff, competition and consumers. The UCL is a strict liability statute and it is  
21 not necessary to show that defendants *intended* to injure or harm Dreamstime.

22 204. Whether a business practice is unfair, fraudulent or unlawful is a question of  
23 *fact* for the fact-finder to determine.

24 205. An act may violate the UCL even if the unfair, fraudulent or unlawful practice  
25 affects only one victim.

26 206. Pursuant to Business & Professions Code section 17203, the entry of  
27 permanent and mandatory injunctive relief against Google is necessary to enjoin its on-  
28 going unfair and/or unlawful business conduct. An injunction is needed to enable and

1 restore consumer choice and competition in the market.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Dreamstime respectfully requests that this Court adjudge and decree  
4 and enter judgment in Dreamstime's favor and against Google, as follows:

5 1. The conduct alleged in the First Cause of Action herein be adjudged to  
6 constitute unlawful monopolization in violation of Section 2 of the Sherman Act (15 U.S.C.  
7 § 2);

8 2. The conduct alleged in the Second Cause of Action be adjudged to constitute  
9 an unjustified breach of contract;

10 3. The conduct alleged in the Third Cause of Action be adjudged to constitute a  
11 breach of the covenant of good faith and fair dealing;

12 4. The conduct alleged in the Fourth Cause of Action herein be adjudged to  
13 constitute a violation of section 17200 *et seq.* of the California Business & Professions Code  
14 as an unfair and/or unlawful business practice;

15 5. Pursuant to Section 4 of the Clayton Act (15 U.S.C. §15), plaintiff recover  
16 treble the actual amount of its damages sustained by reason of defendant's antitrust  
17 violations;

18 6. Pursuant to Section 4 of the Clayton Act (15 U.S.C. §15), plaintiff be  
19 awarded its reasonable attorneys' fees and costs of litigation;

20 7. Pursuant to Section 16 of the Clayton Act (15 U.S.C. §26), the  
21 anticompetitive, discriminatory, and/or exclusionary conduct be permanently enjoined to  
22 abate actual and threatened irreparable injury to Dreamstime's business and property;

23 8. Plaintiff be awarded direct, actual, compensatory, and/or consequential  
24 damages on its breach of contract and breach of the implied covenant of good faith and fair  
25 dealing claims;

26 9. Pursuant to section 17203 of the California Business & Professions Code, the  
27 unfair, unlawful and/or fraudulent business practices of defendant be permanently enjoined;

28 10. Pursuant to sections 17203 and 17535 of the California Business &

1 Professions Code, plaintiff be awarded monetary restitution;

2 11. Pursuant to section 1021.5 of the California Code of Civil Procedure, plaintiff  
3 be awarded reasonable attorneys' fees;

4 12. Award plaintiff prejudgment interest at the maximum legal rate; and

5 13. For such other and further relief that this Court deems just and proper.

6 Dated: September 28, 2018

BAKER MARQUART LLP

7  
8 By: 

9 Jaime Marquart

10 Attorneys for Plaintiff

11 Dreamstime.com, LLC

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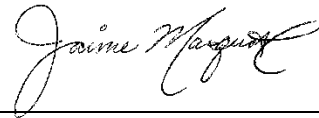
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands, pursuant to Fed. R. Civ. P. 38(b) and Local Civil Rule 3-6,  
a trial by jury of all issues which are subject to adjudication by a trier of fact.

Dated: September 28, 2018

BAKER MARQUART LLP

By: \_\_\_\_\_



Jaime Marquart  
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Dreamstime.com, LLC

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